The Solicitors' Journal

Vol. 93 March 12, 1949 No. 11

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CURRENT TOPICS

Mr. A. M. Langdon, K.C.

FOR fourteen years, until 1939, the late ADOLPHE MAX LANGDON, K.C., was Director of Legal Studies and Head of the Inns of Court School of Law. During some thirty-nine years before that he had built up a large practice on the Northern Circuit. He practised as a "silk" on the circuit and in London for twenty-one years, during the last twelve of which he was a Bencher of his Inn, Inner Temple, of which he became Treasurer in 1935. Among his academic attainments he obtained a first in Mods., a second in Lit. Hum. and a second in the B.C.L. examination at Oxford, and among his professional distinctions were his Recorderships of Burnley in 1909 and Salford in 1915, and his membership of the Royal Commission for Awards to Inventors. He was twice a Commissioner of Assize. Mr. Langdon died on 1st March at the age of eighty-seven.

Dr. T. C. Jackson

BY the death on 4th March of Dr. THOMAS CATHRICK JACKSON, of Hull, at the age of eighty-two the profession loses a member of over sixty years' standing. Dr. Jackson was admitted in 1888 and still held a practising certificate at the time of his death. Formerly a member of the Council of The Law Society, he was notable for his work in the commercial and maritime fields, and in 1904 prepared the case submitted by the Government to arbitration on behalf of the trawler owners whose ships were fired on by the Russian fleet off the Dogger Bank.

The Worshipful Company of Solicitors

ACCORDING to Newsletter No. 8 of the Worshipful Company of Solicitors of the City of London, issued in February, the Company's present membership (which is again the highest recorded) is: liverymen 264, freemen 105, making a total of 369, a net increase of seven over the September, 1948, figure. The livery dinner, it is stated, will be held on Monday, 16th May, at the Mansion House, by kind permission of the Lord Mayor, who will be present with the sheriffs. Liverymen and freemen will be entitled to apply for invitations, and (within the limits of the capacity of the hall, which only holds 355) to invite guests. The Court states that it is deeply disturbed by the latest developments concerning solicitors' remuneration, a matter which formed the principal topic of discussion at the recent general meeting of The Law Society (see *ante*, p. 84). Since the issue of the Newsletter, indeed, the Court has published a memorandum on the subject in which it declares that the "ceiling" on the present Sched. I scale is a monstrous injustice which should have been removed long ago, that the proposals for a new Sched. II are long overdue, and that the White Paper on Personal Incomes has no relevance to the problem in that the Government have failed to distinguish gross fees from personal income. The memorandum sets out the effects which in the opinion of the Court will result from the continuance of the present inadequate remuneration, namely (*a*) young men of ability and initiative will cease to be attracted into the profession as principals; (*b*) the best type of managing clerk will not be obtainable in the absence of wages comparable with those paid by other professions and in commerce, and of adequate pensions; (*c*) members of the profession will be driven to seek salaried employment; and (*d*) principals will be unable to save for retirement, thus blocking the way for incoming partners who, in turn, will be unable to provide out of profits for goodwill payments and their share of capital. In conclusion, the memorandum strongly urges that The Law Society should be entrusted with the responsibility of regulating the remuneration of the profession. Copies of the memorandum can be obtained from the Clerk to the Worshipful Company of Solicitors, Mr. ARNOLD F. STEELE, M.B.E., at 52, Bishopsgate, E.C.2.

Chester and North Wales Law Society

THE report of the committee of the Chester and North Wales Incorporated Law Society, presented at the sixty-fourth annual general meeting of the Society, states that the Society now numbers 222 members, of whom 42 practise in Chester, 53 in Cheshire and 127 in North Wales. Fifty-nine members have been elected during the year. The Society was represented at a meeting at Aberystwyth convened by The Law Society in April, 1948. The University of Wales reported its inability to resume the provision of law classes on the coast of North Wales. The University of Liverpool expressed willingness to consider the provision of lecturers subject to an assurance that there would be sufficient pupils attending to make the classes a success. The committee regrets that there are insufficient articled clerks in the area to justify a continuance of the project. The committee has considered a proposal made by a special committee of The Law Society to the Associated Provincial Law Societies for a review of the system of agency charges, which has been referred by the latter body to its members. It is felt that there is much force in the argument that the present agency allowance of 50 per cent. to the instructing solicitor is excessive, particularly in view of the relatively greater increase in overhead expenses in London than elsewhere, and the committee have informed the Associated Provincial Law Societies that they

approve the proposal that the agency allowance should be decreased to 33⅓ per cent. of the itemised charges, but that the agent should charge only for items of work actually performed and not a percentage of the total bill, and that if the agent takes over the main conduct of an action, special arrangements for that case should be made between principal and agent.

Legal Aid: Long-term Results

PROPHECY and comment were mingled in an article by a correspondent on "Justice To-morrow" in the *Observer* of 27th February on the good and bad results to be expected from the passing of the Legal Aid Bill. The prophecy was that the new facilities will, after a year or two, "undoubtedly bring a flood of new litigants into the courts." The comment was that, while the majority of cases under the new scheme will go into the county courts, the concentrated pressure of the flood will be felt in the High Court, where fewer than fifty judges and 1,000 barristers "have long been responsible for giving our justice its special distinction." Fears were expressed whether the high standard hitherto maintained will be possible if the size of the Bench and the Bar is to be expanded inordinately. Raising the standard of entry into the profession was recommended by the writer as one of the steps that will have to be taken, and, on the other hand, he suggested that the quasi-legislative power of judges of the High Court to create binding precedent may have to be reserved for an enlarged Court of Appeal so as to make a virtue of necessity by deliberately altering the status and functions of the High Court judges. The importance of the article is that it takes into account some of the long-term results of the scheme which have not yet been sufficiently considered. A present danger is illustrated by a letter published in the *Observer* of 6th March criticising the Bill, mainly on the obviously false assumption that the door of litigation will be closed against persons with incomes of more than £420 per annum. Apparently quite educated people have not yet grasped the distinction between "income" and "disposable income," in spite of the publicity given to this new measure.

Late Notifications of War Damage

MISUNDERSTANDINGS and grievances have resulted, as solicitors with experience of war-damage cases know, from the provision in the War Damage Act, 1943, and the Notification of War Damage Regulations specifying the limit of time (thirty days) for the giving of notification of damage and giving the War Damage Commission an absolute and unappealable discretion in deciding whether the time limit should be extended. A recent debate in the Commons showed that a certain amount of public dissatisfaction and anxiety exists on the subject, and now a private member's Bill, introduced by Mr. R. MORLEY and backed by nine other members, has been introduced to amend the law so that the Treasury, after consultation with the Commission or the local authority in whose area the property is situated, may extend any limit of time in particular cases. The proposal is apparently intended to enable the exercise of the discretion to be questioned in Parliament, and that part of it which provides for consultation with the local authority should, if adopted, go far to alleviate hardship. There are many cases, as practitioners know, in which wives and dependants, distraught by the sudden disaster of bomb damage, have posted their notifications to the local authority instead of to the Commission or to the head office of the Commission instead of to the regional office. The Bill is salutary because it lays down a fresh approach to a problem which has produced many cases of injustice.

A New Housing Measure

QUITE a lengthy Bill on the subject of housing was presented by the Minister of Health to Parliament on 28th February. One of the important matters which it is to effect is the deletion of references to the working classes nearly everywhere where they appear in the Housing Act, 1936, so as to enable local authorities to provide the varied forms of housing required for balanced communities. The powers of local authorities to make advances and give guarantees to increase housing accommodation are to be re-enacted, and the limit of market value of houses in respect of which advances may be made is to be increased from £1,500 to £5,000. An extension of local authorities' powers to make allowances towards removal expenses and loss due to disturbance of trade to include persons displaced from houses on land acquired as housing sites, as well as persons displaced from unfit houses and clearance areas, is also contained in the Bill. Powers to provide board and laundry facilities and to sell furniture in connection with the provision of housing accommodation are also given. Other provisions in the Bill provide for financial assistance towards the improvement of housing accommodation, including grants from £100 to £600 to private owners or up to half the cost of improvement or conversion, whichever is the less, subject to certain conditions as to residence or letting. There are also provisions for Exchequer contributions for new houses, for hostels and for experiments in building or equipping houses.

Service of Notice to Quit on President of Probate Division

A NOTICE issued by the Senior Registrar of the Principal Probate Registry announces that when an estate has vested in the President of the Probate, Divorce and Admiralty Division, and it is necessary to serve on him a notice to quit, the notice should be sent by post to the Treasury Solicitor, Storey's Gate, St. James's Park, London, S.W.1. It is obviously important, in a matter where time is of the utmost importance, that no delay should occur, and practitioners should be careful to ensure that any such notice is correctly addressed in accordance with the above direction.

Change of Name: Enrolment of Deeds Poll

As from 10th March the regulations applicable to the enrolment in the Central Office of deeds poll effecting a change of name are to be found in the Enrolment of Deeds (Change of Name) Regulations, 1949 (S.I. 1949 No. 316), made by the Master of the Rolls under s. 218 of the Judicature Act, 1925. The regulations in most respects follow the established administrative regulations of the Central Office which are printed at pp. 1408–9 of the current Annual Practice, but there are certain significant changes. As a result of the coming into operation of the British Nationality Act, 1948, the applicant must in future be described in the deed as a British subject or, if it be the case, as a citizen of the United Kingdom and Colonies by birth, descent, registration, nationalisation, etc.; and evidence that the applicant is a British subject may now take various specified forms. By the same token it is no longer necessary for a married woman, widow or divorced woman to produce her husband's birth certificate. The minimum period of fifteen years during which the applicant must have been known to the householder making the statutory declaration in support of the application is reduced to ten years. The principal innovation, however, concerns the enrolment of deeds evidencing the change of name of an infant. In any such case the deed can only be enrolled by order of the Master of the Rolls, and the application must be supported by such evidence as he may require, including in particular evidence that the change of name is for the benefit of the infant and (where the latter has attained the age of sixteen) that he consents to the application. At the time of writing no information is available as to the procedure for obtaining the order of the Master of the Rolls.

Recent Decision

In *Wilson* v. *Kingston-on-Thames Corporation*, on 3rd March (*The Times*, 4th March), the Court of Appeal (TUCKER, ASQUITH and SINGLETON, L.JJ.) held that there was no evidence of any misfeasance by the defendant authority where a cyclist fell into a hole on a previously repaired part of a tar-macadamised road, which subsequently fell out of repair again, and therefore that the defendant authority were not liable to the cyclist.

THE LEGAL AID BILL IN COMMITTEE

THE Editorial at p. 123, *ante*, quoted Mr. Manningham-Buller's statement that the Standing Committee considering this Bill would have the advantage of the informed criticisms by the profession in the lay and legal press and especially in the columns of this journal. The extent to which these criticisms are likely to influence the final shape of the Bill is apparent from the amendments already on the Order Paper.

The most notable and welcome of these amendments is a new clause tabled by the Government and designed to meet the point upon which the most widespread dissatisfaction has been voiced, namely, that the Bill in its original form made no provision for the many matters lying between mere oral advice and actual aid in litigation. The new clause envisages that where the question of being a party to proceedings has not yet arisen, the applicant may nevertheless be given the assistance of a solicitor on the panel. The exact terms on which the assistance will be given depend on regulations which have not yet been published, but it seems that the Legal Aid Centre will be authorised in proper cases to grant this aid without reference to the Certifying Committee or the National Assistance Board. The new clause indicates that the applicant will be entitled to select any solicitor on the panel and that if this solicitor's efforts to settle the matter are fruitless then application can be made for a full Civil Aid Certificate which will be retrospective. In the first instance this concession will only be available where the applicant is one who would not be required to make any contribution if a full certificate was granted, i.e., one whose disposable income does not exceed £3 per week or whose disposable capital does not exceed £75, but it can be extended by regulation.

On the whole this looks as if this may be a very happy solution, if in fact it enables negotiations and correspondence to be undertaken without requiring the applicant to submit to the cumbrous procedure of examination by the committees. At the same time, by bringing in local practising solicitors it should avoid increasing the clerical facilities of the centres, should avoid a change of the client's legal advisers in the midst of negotiations and should meet the fears expressed in certain quarters that an extension of the functions of the centres would be gravely detrimental to the interests of local practitioners. Further, by enabling a full certificate to be applied for if the need arises, it will meet those cases where a satisfactory negotiated settlement cannot be brought about unless the adviser has a writ in his pocket.

A serious disadvantage of the new clause in its present form is that it will only be available for those so poor as to be unable to make any contribution, and as the Attorney-General has himself emphasised in the course of the second day's debate in Committee, there are not many people in these days who have less than £3 per week. As already mentioned, there is power to extend this limit by regulation and it is felt that it will soon prove necessary to make this extension and that it would be preferable if it were made at once. But the great thing is that the Act itself will not, if the new clause is incorporated, finally limit the type of advice available to oral advice.

Another Government amendment proposes to provide expressly that the centres shall be entitled to give the applicant a written note of the advice tendered. This is a small but valuable concession; a written opinion which a tenant, for example, can produce to his landlord will carry infinitely more weight than a garbled account of the oral advice which he alleges he has been given.

Various amendments to extend the scope of oral advice also stand in the names of other members, notably an amendment to cl. 6, virtually identical with that suggested in the article at p. 4, *ante*, which is in the name of Sir David Maxwell Fyfe, Mr. Manningham-Buller and others. On the whole, however, it is felt that the Government's solution is a better one as likely to be more acceptable to the profession generally, and it is hoped that it will be supported in principle from both sides of the House, without however excluding the possibility of amendment in detail and in particular an extension of the scope of the proposed new clause so that it immediately covers more than a minute fraction of the population.

As regards another point of major interest to the profession —the limitation of the costs of the lawyers of the assisted litigant to 85 per cent. of solicitor and client costs—there seems to be no sign of any amendment to secure that the solicitor for the successful applicant shall have the option of taking the party-and-party costs paid by the other side instead of taxed and reduced solicitor and client costs. A Government amendment has been tabled, however, to make it clear that the higher of the two scales of solicitor and client costs shall be payable.*

The other amendments which have been tabled relate in the main to the constitution of the various committees and to the position as regards costs of the successful unassisted party. As regards the first point, various amendments stand in the names of Mr. Hector Hughes and Mr. Piratin respectively, designed to introduce lay representation. In theory there is obviously much to be said for the introduction of the "consumer element," but having regard to the functions which the committees will have to fulfil the objections seem unanswerable and it is felt that it is right to restrict such representation to the Lord Chancellor's Advisory Committee.

It is to the other question (the costs of the unassisted litigant) that most of the discussion was devoted in the first two days (1st and 3rd March) of the Committee stage. But before this question was reached, there was an interesting debate on an amendment to cl. 1, moved by Mr. Manningham-Buller and supported by other legal members on the Opposition benches. It will be remembered (see p. 5, *ante*) that during the Second Reading debate Mrs. Braddock had suggested that although it might be necessary initially to exclude certain proceedings from the purview of the Bill so far as concerned legal aid to the plaintiff, there could be no justification for doing so in the case of the defendant. This amendment was designed to give effect to this suggestion. It received support from lawyers on both sides of the House, but the Attorney-General announced that the Government, after the most careful consideration, were unable to support it. He pointed out that the object of excluding certain actions, such as defamation and breach of promise, was simply because it was desired to avoid overloading the scheme in the early days and because it was felt that these were the actions most liable to abuse. If they were excluded, aid ought to be refused to both parties as there were possibilities of grave injustice if the State were prepared to subsidise one party and not the other. The logic of this argument was not obvious; the inevitable result of the Bill is that in most cases the State will be supporting one party and not the other. Moreover, as Mr. Quintin Hogg pointed out, it is precisely because such actions are more open than any others to abuse as weapons of blackmail that the defendant should be enabled to defend himself. However, the amendment was lost on a division and the only concession that could be secured was a promise that the matter would be reconsidered in order to see whether an exception could be made in the case of defendants in actions for defamation. Little encouragement was given that the reconsideration would be favourable but it is still hoped that it may, as the case in its favour seems to be overwhelming.

A further amendment to cl. 1, moved by Mr. Joynson-Hicks, and supported by Mr. Manningham-Buller and others, was agreed to without a division. This amendment was designed to make it clear that nothing in the Bill should interfere with the normal privilege arising out of the solicitor and client relationship. This amendment was accepted as merely

* See *Giles* v. *Randall* (1914), 59 SOL. J. 131. This must not be confused with the highest scale of solicitor and *own* client.

declaratory after it had been agreed that it would not preclude (as The Law Society had feared) the framing of regulations requiring the solicitor to make certain necessary disclosures to the area committee.

After other amendments, which did not raise points of principle, had been rejected or withdrawn, cl. 1 as amended was ordered to stand part of the Bill. This did not, of course, preclude the deletion of any of the excluded proceedings or the addition of causes before tribunals or arbitrators, as this matter is dealt with in Sched. I, which has not yet been reached, but the observations of the Attorney-General in the discussion of cl. 1 make it reasonably clear that the Government will oppose any modifications in this respect.

The committee then proceeded to a consideration of cl. 2 and in particular to the problem of the recovery of costs by the successful unassisted party. The Bill as drafted provides that where the assisted litigant loses, his liability under an order for costs made against him shall be limited to " the amount (if any) which is a reasonable one for him to pay " (cl. 2 (2) (*e*)). This provision raises important questions of policy; on the one hand the assisted litigant should not be deterred by the fear of ruin if an order for costs is made against him, on the other hand it is a monstrous injustice if the other party, whose means were originally too large to qualify him for assistance, is ruined by having to pay the costs of defending an action unsuccessfully brought against him by a State-aided litigant. These problems were fully discussed as a result of a number of amendments standing in the names of Sir David Maxwell Fyfe, Mr. Manningham-Buller and others. Eventually the Attorney-General agreed to put down on the Report stage an amendment to the paragraph quoted above to make it clear that in deciding the amount for which the assisted litigant should be liable the court should have regard to all the circumstances including the relative means of the parties. He also indicated that regulations would provide that the decision would normally rest with the judge who tried the case and that arrangements would be made to ensure that he had all the necessary information before him and that his decision could be subsequently reopened if, for example, the assisted party came into a windfall. Further, regulations would enable the judge to cancel the certificate if satisfied that it was obtained by fraud so that a normal order for costs could then be made.

The greatest dispute, however, was on an amendment moved by Mr. Hogg designed to enable the payment of part of such costs out of the legal aid fund. Reference was made in a previous article (at p. 4, *ante*) to the extent to which the committee were likely to be hamstrung by the terms of the financial resolution already passed, and Mr. Hogg had only been able to keep in order by drafting his amendment in terms so complicated that a considerable part of the debate consisted of a dispute between him and the Attorney-General as to what it really meant. However, he did succeed in raising the point of major principle that where the State has encouraged and subsidised an unsuccessful action, the State should indemnify the other party. Ethically, this seems unanswerable and certainly the Attorney-General's attempts to answer it scarcely bear examination.

No doubt it is true that the present provisions will encourage settlements out of court but there is no moral justification for forcing the other side to settle on unfavourable terms rather than face the likelihood of being mulcted in costs.

The real objections are, as Mr. Hogg suggested, presumably those of the Treasury, which refuses to contemplate the increased drain on public funds. Eventually the Attorney-General gave a somewhat half-hearted promise that the whole matter would be reviewed before the Report stage and the amendment was lost on a division.

The committee then adjourned without completing their consideration of cl. 2. They will be sitting on Tuesdays and Thursdays, and it is intended to publish in these columns a weekly summary of their discussions.

L. C. B. G.

MINING SUBSIDENCE COMMITTEE REPORT

THE Departmental Committee on Mining Subsidence appointed on 3rd January, 1947, " to examine the law of support and the problem of damage caused by mining subsidence in the light of the nationalisation of coal and the coal-mining industry and to make recommendations " have now made their report (Cmd. 7637).

The committee have confined their inquiry to the problem of subsidence caused by the mining of coal.

The basic principles underlying the recommendations of the committee are that all existing rights of support which are unnecessary in the national interest should be abolished and that there should be a new and comprehensive scheme of compensation for existing rights of compensation whether acquired by contract or statute and whether they provide for restoration of the surface or otherwise, subject to the proviso that Mining Code rights suitably amended by agreement should be applied to railway and canal undertakings, and that the existing rule of law should be preserved regarding highways whereby the damage recoverable for subsidence is limited to making the highway as commodious as before. The committee recommend that this limitation should be fixed at a figure of 80 per cent.

These basic principles bring in their train the need for establishing what is " in the national interest." The committee recommend (para. 71) that the guiding principle should be to " grant a statutory right of support to all those surface works or buildings which play so vital a part in the life of the community or a section of it that the risk of interruption of their functioning or of serious damage to their structure cannot be tolerated," and they go on to set out examples of these, namely, large power stations, gasholders, reservoirs, main sewage works and certain viaducts (para. 72). Further, they contemplate that all ancient monuments whose character is such as to need support, and other buildings of outstanding importance, interest, beauty or sentimental associations, be granted support where necessary, examples being cathedrals and buildings belonging to the National Trust (para. 73). They suggest a Schedule of Key Points to indicate where support is to be preserved (para. 75). They point out that by sweeping away all existing rights of support the National Coal Board will be free to work coal where and when they please subject only to planning control, which would have the effect of making the planning authority the sole arbiter of all rights of support. They think that neither the Government nor the Ministry of Town and Country Planning would welcome this responsibility for detailed determination of individual rights and hence strongly recommend that, while control of planning on an area basis should remain the responsibility of the planning authority, the right of support in particular cases should, as a rule, be determined ultimately by judicial rather than by administrative decision (para. 69). Hence they recommend the establishment of a tribunal to determine disputes whether property should be included in or withdrawn from the Schedule of Key Points (paras. 76 and 77), and after commenting (para. 82) on the fact that there is a Bill to abolish the Railway and Canal Commission and transfer its functions to the High Court of Justice, they express grave doubts whether the latter would be a convenient or appropriate tribunal for the kind of case which their proposals would create. They recommend the establishment of a new tribunal consisting of a High Court judge or other eminent legal authority as president and two other persons, one at least of whom should have the appropriate technical qualifications. This looks very much like a proposal for the resuscitation of the Railway and Canal Commission in a new guise.

Another result of sweeping away all existing rights of support and substituting (except where support is required to be

maintained in the national interest) a right to compensation for subsidence damage, whether it at present exists or not, would be an increase in the costs of subsidence damage payable by mineral interests. The report points out (para. 52) that between 1936 and 1946 the cost ranged from £276,000 (0·3d. per ton of saleable coal) to £511,000 (0·75d. per ton). In 1947 the cost to the National Coal Board was £611,000 (without taking into account the subsidence costs of licensed mines which, however, affected only a small proportion of the production, i.e., 1·1 per cent). The National Coal Board have represented (para. 53) that their liability under existing law will be increased to approximately £1,000,000 a year (a little over 1d. a ton), and that if they undertake to pay compensation for all damage it would rise to £3,000,000 (equivalent to about 3d. per ton upon an output of 200,000,000 tons).

The committee recommend that the procedure for settling compensation should, as regards public services, be arbitration (para. 88), and, as regards other surface property (para. 90), proceedings in the county court with unlimited jurisdiction. They also suggest what some may regard as an unnecessary elaboration, namely, the maintenance of a register recording all cases of subsidence damage to surface property other than that belonging to the public services. It will be open to the parties, of course, to agree compensation, but even there the suggestion seems to be that any agreement should be subject to the county court judge reviewing the case and being satisfied that the agreement is not an unfair one (Appendix A, cl. 11 of scheme).

The committee propose (para. 94) that their recommendations should operate from the date of the legislation necessary to give effect to them, but (para. 96) that as regards dwelling-houses a right to compensation limited to the cost of repair should be granted retrospectively for all subsidence damage which became manifest on or since 1st January, 1947 (i.e., two days before the committee was appointed), whether such damage has since been repaired or not, and for all subsidence damage which became manifest before that date, provided it was unrepaired on that date and was capable of repair at reasonable expense so as to render the dwelling-house fit for occupation as such. They recommend (para. 97) that the additional burden between compensation payable under the existing law and that which would be payable if their recommendations were made statutory be borne by the Treasury, but recognise that the Treasury may prefer that the legal liability should be placed in the first instance on the National Coal Board.

As regards the cost of compensation generally, which, as previously stated, the National Coal Board consider would rise from £1,000,000 to £3,000,000 per annum, the committee recommend that the Treasury should make an additional grant, subject to periodical review, of £2,000,000 to the National Coal Board, and that, thus aided, the Board should bear the entire cost of subsidence damage (para. (14) of Summary of Recommendations).

The committee's report, with three appendices, covers thirty-six printed pages, and contains many detailed recommendations, but in the remarks made above an effort has been made to limit the matter to the general principles. As an example of one of these more detailed points, the committee recommend (para. 68) that as regards agricultural land the National Coal Board should be forbidden to acquire or continue to hold agricultural land not required by them for operational purposes, and that such land be transferred to the Minister of Agriculture and Fisheries; also that there should be a discontinuance of the practice of granting "damage-free" leases or tenancies.

Nowhere in the report does any reference appear to have been made to ex-copyhold interests. In those manors where, exceptionally, the custom was that the copyhold tenant had the right to work the minerals under his tenement without the licence of the lord of the manor, the National Coal Board, as the successors to the Coal Commission, have acquired the mineral interests of the ex-copyholders. Where, however, as in the normal case, the manorial custom was that the property in the mines and minerals was in the lord of the manor and the possession was in the copyhold tenant, the present position is that the latter retains his possessory interest in the minerals and has a right to veto their working, and it has been the practice in the past for the ex-copyholder to be paid a share of the royalties for working of the minerals in view of his possessory interest. In these cases the ex-copyholder not only has a right of support which would be covered by the committee's recommendations but also what is described in s. 5 (7) of the Coal Act, 1938, as a "retained copyhold interest" which is not such a "retained interest" as vested in the Coal Board under s. 5 (1) of the Coal Industry Nationalisation Act, 1946, and para. 1 (1) of Sched. I thereto. It is a matter for consideration in connection with any legislation giving effect to the committee's recommendations whether the problem should be tackled as to what is to happen to the ex-copyhold rights where they still exist.

In confining their inquiry to the consideration of the problem of subsidence caused by the mining of coal, the committee appear to have omitted to deal with the problem of other mineral interests of the National Coal Board. The Board have become owners not only of coal interests but of certain minerals other than coal, i.e., minerals worked in association with coal and other minerals previously owned by colliery concerns where these were not excluded from vesting in the Board under the Coal Industry Nationalisation Act, 1946. It would, of course, be quite simple for any legislation made pursuant to the committee's recommendations to be made to apply to these other mineral interests as well. There are, however, other mineral interests which do not belong to the National Coal Board, notable examples of which are ironstone and lead, which in the main remain in private hands. The committee's recommendations cannot easily be applied to such other mineral interests since their recommendations are on the basis that the mineral interests affected are those of the National Coal Board alone.

It would seem unfortunate if these interests are left outside the purview of any prospective legislation.

F. A. E.

Taxation

THE DEATH DUTIES: HUNTERS AND HUNTED—IV

GIFT OR SALE

To attract estate duty a disposition made inside the five-years period must have some element of bounty in it, and according to Green's Death Duties, 2nd ed., p. 80, the onus of proving the absence of bounty is not upon the Inland Revenue. Generally speaking, if there was genuine partial consideration a corresponding allowance will be given against the value of the property for both estate duty and succession duty; but if the transaction was, in the opinion of the court, not a genuine sale at all, but rather an arrangement for avoiding duties, then the duties would become payable on the whole property without any allowance in respect of partial consideration.

There are substantial differences in this connection between estate duty and succession duty. Total exemption is given by the Finance Act, 1894, s. 3 (1), in the case of estate duty only when *full* consideration in money or money's worth passes, and by s. 3 (2) proportionate allowance is given when partial consideration in money or money's worth was paid. But in the case of succession duty there is no necessity for "full" consideration: the effect of ss. 7 and 17 of the Succession Duty Act, 1853, is to exempt transactions which were "*bona fide* sales" (s. 7) and also "bonds or contracts made by any person *bona fide* for valuable consideration in money or money's worth" (s. 17). Also, in the case of

estate duty, gifts in consideration of marriage are exempted even if made within the five-years period, but for succession duty purposes marriage is no consideration; it is not "valuable consideration in money or money's worth," nor is it a "*bona fide* sale" (*Floyer* v. *Bankes* (1863), 32 L.J. Ch. 610; *Ld. Adv.* v. *Sidgwick* (1877), 14 S.L.R. 522). The latter case shows that where, in a marriage settlement, each side settles a roughly equivalent sum of money, the consideration for each is the *marriage*, and the settlement by the one party is not to be taken as the consideration of the settlement by the other. Therefore no exemption arises under ss. 7 or 17 of the Succession Duty Act.

The following interesting cases serve as an illustration of the differences between the duties. The first one fortunately deals with both the duties: *Re Bateman* (*Baroness*) [1925] 2 K.B. 429. The deceased, in consideration of a payment down of £5,100 by her son, settled furniture on herself for life with reversion to the son. The value of the furniture was £45,000 and the value of the reversion to it at the date of the transaction was assessed at 20 per cent. more than the £5,100 which the son paid for it. Rowlatt, J., held that estate duty was payable on the settlor's death on the excess 20 per cent. under the Finance Act, 1894, s. 3 (2), but that no succession duty was payable at all, as the transaction was a *bona fide* sale, and the consideration paid was not so inadequate as to be an unreality.

In *Att.-Gen.* v. *Johnson* [1903] 1 K.B. 617 (C.A.), a deceased handed £500 in his lifetime to the London Missionary Society in exchange for an undertaking by the latter to pay an annuity of £25 to himself and then to his wife, if she survived him. At that time £25 per annum represented roughly the income from the £500, so that the society's income from the capital equalled its annual payment out to the deceased and his widow. In other words, the society was never out of pocket—it paid nothing for the £500 handed to it. Both estate duty and succession duty were claimed by the Revenue on the widow's death. First, as to estate duty, the lower court held (1) the whole £500 was *prima facie* dutiable, because it passed, in effect, to the society by reason of a gift made by the deceased (outside the statutory period) of property in which he reserved "a benefit by contract" within the meaning of the sections of the earlier Acts incorporated in the Finance Act, 1894, s. 2 (1) (*c*); but that, as to £210, part thereof, it was a sale and purchase, and exempt to that extent under s. 3 (2) of the 1894 Act, £210 being the actuarial value of the joint annuity at the date of the transaction; estate duty was therefore payable on £290 only. The Court of Appeal held, however, that there was no *bona fide* sale at all, because the society was never out of pocket, and consequently estate duty was payable upon the whole £500; secondly, as to succession duty, this was held to be payable upon the full £500 because (1) there was no *bona fide* sale, and (2) there was a reservation of the whole income to the donor, and duty was payable on the whole capital under the Succession Duty Act.

Family Partnerships

A father admits his sons into partnership with him in his business under terms that on his death his share of the firm's assets and goodwill passes to the sons, without payment. The sons bind themselves to give their whole time and efforts to the business, whereas the father does not, but the sons do not bring in any capital. When the father dies, are death duties payable on his share of the goodwill and other assets, including reserves (if any), which pass to the sons, or can it be successfully contended that they pass to the sons by way of purchase, and therefore (Finance Act, 1894, s. 3) attract no death duties on the father's death (even if he dies within five years of the date of the partnership agreement)?

As already indicated above, to escape all estate duty the transaction must not only amount to a *bona fide* transaction for value, but it must be "full consideration in money or money's worth" paid to the father "for his own use and benefit" (Finance Act, 1894, s. 3); but to attain freedom from succession duty it need only be "a *bona fide* sale"; in other words, for estate duty purposes the father must not make a bad bargain, but succession duty ignores a fool to a reasonable extent, so long as he is an honest one.

Nevertheless the courts have properly recognised that there may be special circumstances affecting business arrangements within a family; that what might be full consideration for estate duty purposes between father and son might be a low price in the open market. For instance, *Re Samuel Thornley* (1928), 7 A.T.C. 178, where a father sold his share in a private company to his son, at a price substantially less than an accountant's valuation, and died within three years. The transaction was held not to have been a gift, or even a partial gift, on the ground that the father was justified in selling to his son at a lower price than the valuation figure, because an outsider might not have been found to give a better price.

The circumstances in this case were perhaps a little unusual, and the decision should be acted upon with some caution, at all events where estate duty (as distinct from succession duty) is concerned. One or two partnership cases may be noted by way of illustration. It will be clear that no hide-bound rules can be put forward, and that in many cases it must be doubtful what view the courts will take, but it is certain that large amounts of duties can be saved by well-drawn partnership agreements, and that it will be advantageous to many families to enter into such as early as possible in the lifetime of the head of the firm.

Att.-Gen. v. *Boden* [1912] 1 K.B. 539, was a case of a partnership between a father and his sons, the sons to give full time to the firm and not to engage in any other business, but the father was not so bound. On the death of any partner his share was to accrue to the survivors, but to be paid for (by valuation) to the deceased's executors. Goodwill was to be valued and paid for on the death of either son, but *not* on the father's death. Estate duty was claimed on the father's death on his share of (*a*) the firm's assets and (*b*) the goodwill. It was held that neither (*a*) nor (*b*) was dutiable, as the father had made a good bargain; but the decision may have been influenced by the fact that the value of the goodwill was found not to have been large.

In *Brown* v. *Att.-Gen.* (1898), 79 L.T. 572, a father admitted his sons into partnership for five years, without their bringing in capital: father two-thirds share and sons one-third between them. The firm's value was over £62,000. If the father died during the five years the sons were to have the *whole* of the firm's assets on paying the executors £10,000. He did so die and the court held that the sons had *not* given full value, and duties were payable on the father's share, less the £10,000 paid by them. Possibly in this instance the sons' services were of less value to the firm than the father's were.

Reference may also be made to *Ld. Adv.* v. *M'Kersies* (1881), 19 S.L.R. 438, and *Att.-Gen.* v. *Ralli* (1936), 15 A.T.C. 178.

It may be added that certain family arrangements by way of settlement of claims, or supposed claims, may amount to a bargain and sale for duties purposes (*see Att.-Gen.* v. *Kitchin* [1941] 2 All E.R. 735).

H. A. W.

OBITUARY

Mr. J. S. BLACKLOCK

Mr. James Scoular Blacklock, solicitor, of London, died in Paris on 17th February, 1949.

Mr. J. HALES-TOOKE

Mr. John Hales-Tooke, solicitor, of Norwich, died recently. He was admitted in 1914.

Mr. J. W. HODSON

Mr. John Wignall Hodson, solicitor, of Fleetwood, on 16th February, aged 65. He was admitted in 1907.

Mr. H. H. RAMSDEN

Mr. Harold Hirst Ramsden, formerly solicitor of Huddersfield, died on 1st March, aged 74.

Company Law and Practice

PROXIES: SOME MISCELLANEOUS POINTS

IT is not without some hesitation that I draw the attention of my readers once again to certain of the requirements of s. 136 of the Companies Act, 1948. Compliance with the provisions of this section will by now have become almost second nature to many practitioners, and the following provision may have become particularly familiar, namely, " that in every notice calling a meeting of a company having a share capital there shall appear with reasonable prominence a statement that a member entitled to vote is entitled to appoint a proxy, or, where that is allowed, one or more proxies, to vote instead of him and that proxy need not also be a member." Second nature is, however, far from being infallible, and a busy practitioner may well be induced to insert this statement in a notice convening a meeting of a company not having a share capital or, even worse, to omit such statement in the case of a meeting of a company having a share capital.

The position in the former instance does not seem certain—the Act certainly prescribes no penalty in such a case, but it is doubtful how far the effect of inserting such a statement might invalidate the notice. If the statement was fortuitously in accordance with the provisions of the company's articles it could not be said that the notice was misleading and it would merely be redundant. If, on the other hand, the notice gave a member to understand that he could appoint a proxy who was not a member of the company, and this was not in fact possible under the company's articles, it might well be held that the notice was invalid.

Let us now consider the effect of omitting the required statement in the case of a notice convening a meeting of a company having a share capital. First of all, the Act imposes liability to a fine not exceeding £50 on every officer of the company who is in default. This fine should not be ignored either on account of its smallness when compared to many other fines imposed by the Companies Act nor on account of the rarity of its enforcement. The effect of failure to insert the statement required by s. 136 (2), however, extends far beyond the scope of a statutory fine. To begin with, the notice will be *prima facie* bad, with the result that the meeting will be invalid and also all resolutions which purport to be passed at the meeting. It is not possible in a short article to attempt even to summarise the many consequences which ensue as the result of defective notices. One question does, however, arise, and that is how far a notice which is defective as a result of non-compliance with s. 136 (2) may be validated.

In some cases the defect in a notice may be curable *ex post facto*. For instance, if articles are adopted and acted upon for a long period they will be treated as valid and operative, even though not enacted by a valid special resolution (*Ho Tung* v. *Man On Insurance Co., Ltd.* [1902] A.C. 232). In some cases a subsequent meeting of all the shareholders of a company at which a unanimous resolution is passed may have the effect of validating a resolution which purported to be passed at a previous invalid meeting. This is not, however, always the case.

Let us briefly consider the case of a reduction of capital in a small company. The notice convening an extraordinary general meeting of such a company to pass a special resolution for the reduction of its capital omits the required statement regarding proxies. The meeting is held and the company purports to pass the necessary special resolution. After the meeting, but before the case comes before the court to be sanctioned, the defect is spotted and the signature of all the members of the company is forthwith procured to a resolution waiving the formalities of the notice of the extraordinary general meeting. It could be argued on behalf of the company that the case falls within *Re Oxted Motor Co.* [1921] 3 K.B. 32, with the result that it would be held that the provision contained in s. 136 (2) exists only for the protection of shareholders and that it is within the power of all the shareholders of a company to waive any formality as to notice of the meeting. It is, however, submitted that such an argument will not long stand the light of scrutiny. When the decision in *Re Oxted Motor Co., supra,* is closely examined it becomes clear that all the shareholders of a company can only waive the formalities of a meeting attended in the present by all the shareholders (cf. *Re Express Engineering Works* [1920] 1 Ch. 466, 466, at p. 471). It would seem that the decision in these cases cannot be taken as an authority for the view that all the shareholders of a company, by passing a unanimous resolution at a subsequent meeting, can thereby waive the formalities of a notice convening an earlier meeting. If this submission is correct, it seems that, if the special resolution were permitted to come before the court to be sanctioned, the court would take the view that it could not give its sanction as there would be nothing to sanction. The Act lays down that a notice convening a meeting shall contain the required statement relating to proxies. If the notice does not contain this statement, the notice is bad; if the notice is bad, the meeting and the special resolution are invalid and consequently there is nothing for the court to sanction. In short, it seems that the effect in this instance of omitting the statement relating to proxies would be that the court would ultimately react in the same manner as it did in *Re Hector Whaling, Ltd.* [1936] Ch. 208, in the case of short notice given of the special resolution. In this case the further hearing of the reduction petition was adjourned to enable the company to call a fresh meeting. From this it follows, of course, that the reduction petition would have to be amended accordingly.

Another point has recently been raised with regard to s. 136, this time in relation to subs. (3). This subsection lays down that any provision contained in a company's articles shall be void in so far as it would have the effect of requiring the instrument of proxy (or any other document necessary to show the validity of or otherwise relating to the appointment of a proxy) to be received by the company or any other person more than forty-eight hours before a meeting or adjourned meeting, in order that the appointment may be effective thereat. It has been contended that a provision in a company's articles which requires proxies to be received at the company's registered office " not less than " forty-eight hours before the meeting is invalidated by s. 136 (3). It is true that the inference of such provision is that proxies will be received at the company's registered office more than forty-eight hours before the meeting, as if they arrive less than forty-eight hours before the meeting they will not be valid, and it is clearly impossible to time the arrival of the proxy instruments so that they arrive exactly forty-eight hours before the meeting is due to commence. Despite these inferences, however, the wording of the subsection is perfectly clear. It states that any provision shall be void in so far as it would have the effect of requiring the instrument of proxy to be received by the company more than forty-eight hours before the meeting. It cannot be said that a provision which requires a proxy to be received not less than forty-eight hours before the meeting *requires* the proxy to be received more than forty-eight hours beforehand. It is further submitted that even if a scintilla of doubt remains on the wording of s. 136 (3) it is quickly removed by the provisions of Table A, reg. 69. Regulation 69 provides, *inter alia*, that instruments of proxy shall be deposited not less than forty-eight hours before the time for holding the meeting, and it is well established that the provisions of Table A cannot be *ultra vires* or void.

N. P. M. E.

The King has approved the appointment of Mr. JUSTICE BLACK as a Lord Justice of Appeal in Northern Ireland, and of Mr. CHARLES LEO SHEIL, K.C., as a Judge of the High Court of Justice in Northern Ireland.

A Conveyancer's Diary

FAMILY PROVISION—I

In the course of a short review of the main events of interest to the conveyancer that took place in 1948, made some two months ago, I promised to review the cases which have recently been decided under the Inheritance (Family Provision) Act, 1938. The fulfilment of this promise gives me the opportunity of expressing surprise, not, I think, for the first time, at the number of misconceptions concerning both the scope of the Act and, perhaps even more, the practice under it, entertained by practitioners. The Act is admittedly not an easy one to construe or to apply, but it has been with us for a decade and its main features should be familiar enough by now. The current (10th) edition of Theobald on Wills contains a chapter on the Act—the best short exposition that I know of—and anyone who reads that, and the notes to Ord. 54F in the Annual Practice, should be reasonably well equipped to deal with the everyday problems which arise under this Act, and the number of these problems will probably grow. The thing which has so far kept the number of applications under the Act below that which was expected at the time of its enactment is, I suspect, ignorance among would-be applicants of the benevolent Chancery practice of ordering costs of all parties to certain proceedings to be taxed as between solicitor and client and to be paid out of the estate, a practice which extends to applications under the Act. The Legal Aid Bill will not, presumably, have any direct effect on this practice, but by removing the inhibitions of prospective applicants and putting them in the way of obtaining free advice more easily than is now the case, its indirect effect will surely be to increase the number of applications. Unfamiliarity with the provisions of the Act will then become even less excusable than it is to-day.

There were four cases under the Act which were fully reported in 1948, all of which dealt with important points of practice, and three of which concerned the time at which an application should be made under the Act. The main provision in this respect is s. 2 (1) of the Act, which reads as follows :—

> " . . . An order under this Act shall not be made save under an application made within six months from the date on which representation in regard to the testator's estate for general purposes is first taken out."

In *Re Dorgan* [1948] Ch. 366, the applicant was the husband of the testatrix, who by her will had left her residuary estate upon trust for a crippled daughter for life and for certain other daughters after her death, and had left the applicant nothing at all. The summons was taken out more than six months after a grant of probate had been made to the testatrix's estate. It was argued on behalf of the applicant that one of the exceptions as to the date of application contained in s. 4 (1) of the Act saved the summons from being out of time. Section 4 (1) provides that on an application being made after the expiration of six months from the date on which representation in regard to the estate was first taken out the court may make, *inter alia*, an order for making provision for the maintenance of another dependant of the testator. Section 1 of the Act defines " dependant " to include an unmarried daughter and a daughter incapable of maintaining herself, and the argument was that as the crippled daughter was enjoying bounty during her lifetime under the will, there was one dependant being maintained, with the consequence that s. 4 (1) authorised the court to make an order for maintenance of the husband as " another dependant " notwithstanding that the summons was out of time under s. 2 (1). Harman, J., rejected this argument on the ground that, in order to bring the exception contained in s. 4 (1) into operation, it is a pre-condition that there should not only already be a dependant who satisfies the definition in s. 1, but that such dependant should be a dependant in receipt of provision under the Act.

There are two further points to be noted in *Re Dorgan, supra*. Firstly, the learned judge expressed the view that had it not been for the delay, he would have been inclined to make an order for maintenance in favour of the husband, who had no means apart from an old-age pension. The impression that only in exceptional circumstances will an order be made in favour of a widower is erroneous. Secondly, apart from the fact that the summons was issued more than six months after the grant of probate in this case, it was allowed to lie for some four years after its issue with no further action taken on it. There is nothing in the Act to prevent a " stale demand " being heard on this account, but the result of undue delay may for all practical purposes be the same ; for as Harman, J., observed, the delay made him doubt whether the applicant's need would be so urgent as to justify an order.

The next case is *Re Searle* [1949] Ch. 73 ; [1948] 2 All E.R. 426, a case in which the principal question was whether the application was made in time in accordance with s. 2 (1) of the Act. The relevant dates were as follows : testator died on the 29th October, 1946 ; summons taken out on the 18th March, 1947 ; probate granted on the 6th May, 1947. Roxburgh, J., held that the application, although made before the grant of representation, was in time. This conclusion was reached in this way. Starting with the proposition that the obvious purpose of s. 2 (1) was to prevent applications being made too late, when parties had altered their positions in face of the dispositions made by the testator, and that it was improbable that the possibility of an application being made too soon had ever attracted the consideration of Parliament, the learned judge pointed out that under the terms of s. 2 (1) the time to look at the matter was the time when the court was about to make an order (the words of the section are not " no application shall be entertained unless made within six months," etc., but " an order . . . shall not be made save on an application made within six months," etc.). For this purpose the date on which representation is taken out was first looked at, and a date six months after that date was then calculated—in this case it was the 6th November, 1947. The final step was to ask whether the application had been made before the latter date, and the answer being of course in the affirmative, the application satisfied the time provisions of s. 2 (1).

But there was a further difficulty in this case. The procedure for making applications under the Act is laid down in R.S.C., Ord. 54F, which provides (by r. 2 (1)) that on any such application the person applying shall be the plaintiff and the executor or other personal representative shall be defendant. It was argued on behalf of the plaintiff that under these rules it was permissible to start an application before probate, if the persons who are named executors are made defendants, irrespective of whether they ultimately prove the will or not. Roxburgh, J., refused to decide the point, but held that in so far as there had been any irregularity under the rules in this particular case, it was too late to object on any such ground at the hearing.

" A B C "

(To be concluded)

Last November the Council of The Law Society decided that, where the prescribed books for the Intermediate Examination do not deal with new legislation, no questions will be asked at the examination on such legislation.

It was also decided that candidates will not be examined on obsolete legislation referred to in the prescribed books, unless such legislation is included in an edition of a prescribed book published since the legislation became obsolete.

As there appears to have been some doubt about the scope of the previous notification which was issued by The Law Society, the Council wish to make it clear that these decisions extended to case law.

Landlord and Tenant Notebook

A MEANINGLESS COVENANT

THE facts of *Frederick Berry, Ltd.* v. *Royal Bank of Scotland*, reported in *The Times* of 25th February, were out of the ordinary. The report is headed " Covenant against Exhibiting a Nameplate: Construction," and this is accurate as far as it goes. But the actual issue was the unusual one whether the presence and wording of a particular tenant's covenant created, by implication, a particular obligation on the part of the landlord.

The plaintiffs held a lease of the third floor of a building in New Bond Street, London, the defendants being their landlords and occupying the ground floor. The plaintiffs had covenanted not to hang out or exhibit any signboard or other advertisement on the third floor or at the main entrance of the premises without first obtaining the landlords' consent, such consent not to be unreasonably withheld. They were jewellers and antique dealers, and at the entrance to the defendants' bank there was a small plate giving their name and description at the side of one of the pillars, while a larger plate in the lobby just inside the door recorded the same information and was, according to Lord Goddard, L.C.J., who tried the case and personally inspected the premises, visible from across the road. The plaintiffs, however, applied for the defendants' consent to their affixing a nameplate *on* a pillar of the main entrance, and when this was refused they sued for a declaration that the defendants were not entitled so to refuse it.

Most readers, at all events those who practice in the country, will be familiar with the client who inquires whose duty it is to repair some right of way: a spiritual kinsman of the draftsman of the invitation received by Mr. Sam Weller requesting the pleasure of his company to a " friendly swarry, consisting of a boiled leg of mutton with the usual trimmings." It then becomes the adviser's task, while avoiding the use of such expressions as *ius in alieno solo*, incorporeal hereditament, and the like, to explain to his client the difference between what is tangible and what is intangible. I do not suggest that confusion between the two is inexcusable; indeed, I have sometimes wondered, when passing a notice displayed at an entrance of one of the Inns of Court, what is meant by the word " this " in the following context: " Rights of Way Act, 1932, 22 & 23 George V, Chapter 45, Section 1 (3). *This* is not a right of way."

In *Frederick Berry, Ltd.* v. *Royal Bank of Scotland*, a little analytical thinking showed that, the plaintiffs having nothing more than a right to pass through the entrance and across the lobby, the terms of the covenant in so far as they referred to the main entrance took them nowhere. There is a vital difference between a covenant not to affix a nameplate where one had no right to affix it and a covenant not to assign or sub-let, as a tenant is *prima facie* entitled to, without the consent of the landlord. In fact, it would seem that as regards the main entrance, the covenant and its proviso were about as much use as would have been a covenant by the tenants not to draw cheques on the defendants unless and until an account had been opened.

The learned judge did observe that a meaning could be given to the proviso as to consent not being unreasonably withheld by applying it to the restriction on putting up a notice outside the third floor. But this, in my submission, leaves the words " or at the main entrance of the premises " devoid of effective meaning.

The observation about visibility of existing signs was made *obiter*, the learned Lord Chief Justice, while deciding the case against the plaintiffs on the construction of the covenant, being willing to express his views on the question whether they would, if they had had a corporeal interest in the structure of the main entrance, have discharged the burden of showing that the defendants' refusal was unreasonable. As indicated, the opinion was that they would have failed. Perhaps I may add that the visit paid by the learned judge to the premises must not be taken to be a precedent or an indication that the practice of the High Court is about to conform to that of tribunals under the Furnished Houses (Rent Control) Act, 1946. The learned judge mentioned that the weather was fine at the time of his inspection.

If the facts were out of the ordinary, the decision does draw attention to the need for careful and imaginative draftsmanship when dealing with leases of upper parts of buildings. Even the reference to putting up a notice *outside* the third floor recalls such a decision as *Gifford* v. *Dent* (1926), 71 SOL. J. 83, in which a tenant of upper floor premises not far from the site of those which figured in the recent case was held to be not entitled to hang out a sign which would occupy some small portion of the air above a court not demised to him. It was argued on his behalf that such a decision would mean that he could not put his head out of the window without committing trespass, but the court took the view that the grant did carry that right with it, by implication. That the external walls are *prima facie* included in the demise was shown by such authorities as *Carlisle Cafe Co.* v. *Muse Bros. & Co.* (1897), 46 W.R. 107; *Hope Bros., Ltd.* v. *Cowan* [1913] 2 Ch. 312; and *Goldfoot* v. *Welch* [1914] 1 Ch. 213. But the first-named, in which the tenant was held entitled to use outer walls for advertisement display purposes because he had relied on a representation to that effect, sounds a note of warning: such user must be reasonable, so it is obviously better for the parties to sit down and contemplate and express in the lease exactly what they intend. The tenant in *Hope Bros., Ltd.* v. *Cowan* was tenant to the plaintiffs of a first floor office above their shop; the plaintiffs had covenanted to permit him to affix trade signs approved by them on the outside of *their* part of the building; and what they complained of was the placing of window-boxes outside *his* windows. They had also covenanted to repair the external parts, but it was held that the window-ledge was none the less part of what was let to the defendant, and as the window-boxes did not project beyond a cornice below them (which was two feet wide) there was no trespass. In *Goldfoot* v. *Welch* the plaintiff, a dentist, took rooms on the first and second floors of the defendant's business premises, and advertised his profession by words in adhesive white lettering affixed to his windows. The defendant then affixed advertisements on the parts of the wall flanking those windows. The plaintiff alleged derogation from grant, but substantially judgment was given in his favour on the simple ground that the walls were part of what was demised; evidence of a verbal reservation or exception was held to be inadmissible.

R. B.

THE SPELLING REFORM BILL

THE movement for spelling reform must have numbered among its adherents at one time or another almost everybody who has ever learned to write English. We have all tried to reform the spelling in small ways here and there, and have all had our enthusiasm ruthlessly repressed by schoolmasters, printer's readers and other stiff-necked men who insist on traditional methods.

Our trouble was, of course, that we were only nibbling at the problem. There was no cohesion in our ranks. Some of us wanted to reform the spelling of a few specific words like " accommodation " and " embarrassment "; others refused to conform to certain rules or principles such as the one that " i " comes before " e " except when it doesn't; still others took their stand against different spellings of the same sound, like " to " and " too." But it never occurred to most of us, except perhaps in moments of rare exasperation, that the whole thing wanted a good going over. It did occur, however, to Mr. Follick, Mr. W. J. Brown, Mr. Pitman, Sir Patrick Hannon, Mr. Rankin, Mr. Proctor,

Colonel Stoddart-Scott, Mr. McAllister, Mr. Odey, Mr. Delargy, Mr. John E. Haire and Mr. Morley, and they have promoted a Bill about it. It would be unfair to suggest that these Members of Parliament are bad spellers themselves, but at any rate they have a great deal of sympathy for those of us who are. They wish, they say, " to set up a committee to introduce a rational system of spelling with a view to making English a world language and to eliminate unnecessary drudgery and waste of time at school." Nothing could be more sympathetic than that.

This English Spelling Committee is to prepare a scheme for rational spelling, and the first doubt that will visit most minds is whether rational spelling would be suitable in any way whatever for the use of irrational people. Schoolboys and schoolgirls are notoriously irrational. The sort of little boy who now writes " dere " for " dear " would, if the word were correctly spelled " dere," write " dear." The reformer may say that at any rate the boy wouldn't be confused by " dear " and " deer " if they were spelled the same way, but the answer to that is that he isn't confused now. He's quite happy. He spells them both " dere."

Happiness is not the business of committees, though, and it may be argued that even irrational people will aim more accurately if they have something rational to aim at, just as the most unsteady of returning revellers will get his key into the keyhole with less difficulty if there is no earthquake taking place. It may be argued, in fact, that irrational people are the very people who need rational spelling most. Even if this is so, however, they are likely to be the last people to see it.

Indeed, the outlook for this Bill cannot be called bright. The only English speakers who are likely to see any benefit for themselves in it are those who have not yet learned to spell, and the majority of these are not yet allowed to vote. Of those who have, roughly speaking, learned to spell, it is a nice point whether the good or the bad spellers will view the Bill with more apprehension. The good spellers will see in it the vehicle on which their opportunities of appearing a little cleverer than their fellows may ride away for ever. The bad spellers, having with great difficulty acquired a passable proficiency in a difficult art, will stoutly resist a change of system which would start them on their desperate struggles again, for they will suspect with some justification that however rational spelling becomes it will never be rational enough for them.

The sort of reform they would welcome was expressed to me by a friend of mine, a poor speller who was nevertheless a great player of card games in which the participants are dealt letters of the alphabet and have to form words from them. This man was struck by the number of times he was left with two or three letters in his hand which formed perfectly pronounceable words that were not, however, to be found in the language. " Why on earth do we bother with enormous words like ' sesquipedalian ' and ' disestablishmentarianism ', " he used to say, " when there are thousands of excellent little short words like ' mip ' and ' pim ' which have never been assigned a meaning ? " The fact that he could get rid of the same cards by laying down the word " imp " did nothing to discourage his reformist zeal.

That such a radical reform as the above is contemplated by the sponsors of the Bill can hardly be hoped even by the worst spellers. In point of fact the Bill does not mention bad spellers at all ; the only people specifically referred to are " civil servants and others," whose tasks in writing the English language, the Bill says, it wishes to lighten. In thus singling out civil servants the Bill can only mean one of two things, both of which are aspersions : either that civil servants use words that are longer and more difficult to spell than those used by ordinary people, or that civil servants can't spell anyway. This is probably unfair. There is hardly any profession that dares cast the first stone in this matter ; even solicitors have been known to slip up. If there is any class or category of men that can afford to be superior about it it is, as was remarked above, that of printer's readers. It is this fact alone that emboldens me to say that the only spelling mistake to be found in this article is in inverted commas.

R. L. N.

HERE AND THERE

THE NEW FOREST BILL

EVERYBODY (except, of course, those literal-minded foreigners) knows that the New Forest and its ways are " a miraculous survival of pre-Norman England "—the phrase of the Baker Report on it—but it seems that the novelty has worn rather thin, for a doom's day now impends over it in the shape of a Bill to enable the Government to enclose another 8,000 of its 60,000 acres for forestry and agriculture, in addition to the 16,000 which have already taken the same one-way road to commercial timber ; thus the New Look proposed for the New Forest would seem to have a good deal more of the Scotch fir than the Royal Oak about it. Not that there is anything particularly new about the notion of mass enclosure. In the nineteenth century a pretty determined attempt was made to swallow the whole forest at a mouthful but, public opinion backing the Commoners in their not altogether unnatural resistance to elimination, an Act was passed in 1877 confirming them in their livelihood and securing a national park for everyone else. So far, so good. The Commoners, with their ancient fenced holdings of four acres, continued under the beneficent rule of the Verderers, representing the Crown in its non-departmental aspect, who preserved game, repaired fences and collected forest dues and payments for horses and cattle turned out to graze. But what the Act had not provided against was the reaction of the Office of Woods which, balked in its designs, proceeded to sew up its pockets and leave the whole cost of maintenance with the Verderers. Hence in the long run a revenue crisis of deterioration. Hence the idea of further diminishing the already impoverished Forest. From the town's eye view, I suppose it is unanswerable. But the blood-sports Bill taught Westminster quite a lot about the country it never knew before and maybe the New Forest may teach it some more. Perhaps it might like to study " The Commoners' New Forest," by Dr. F. E. Kenchington, a Forester and the son of a Forester, who himself ploughed and restored to pasture some 500 acres of open grazings run to scrub and bracken. As a practical man he sees what perhaps the idealistic bulldozer driver cannot be expected to see through a cloud of blue prints, that " the problem of the rural economy of this block of poorish land with its strange incalculable soils " finds its solution in the " close-knit nexus of age-old rights and established ways," and that " given a rebore the old engine is still capable of playing its part and paying its way in this modern world." For this rebore " the essential tool is the grazing and browsing animal." And then, even in Westminster, they like to see a few grazing and browsing animals on the bill of fare, Argentine or no Argentine.

LOOKING THE PART

THE contesting of the Bill has, of course, called out the Parliamentary Bar in force and required them to explore some little-known tracts of the dictionary for the terminology of the greenwood tree. Even so, when a member of the committee asked what was an " agistor," the learned gentlemen, one and all, were somewhat at a loss for a precise definition, until one of them promised to produce a real live agistor for inspection. He is, by the way, " an officer who has the charge of cattle pastured for a certain stipulated sum in the King's forest and who collects the money paid for them." Simple enough—but what *was* in the mind of that well-bred Victorian girl who, when a young barrister, seeking to entertain her in conversation after his fashion, began, " I've just had a most interesting case about the agistment of cattle," icily replied : " I think *that* is a topic best reserved for the smoking room " ? The hearing has been full of interest, but it was something of a disappointment that the representative " hiker " (called to illustrate public enjoyment) did not come habited in the manner of his calling with shorts and hob-nails and rucksack. There's an enormous amount in looking or not looking your part. There was once a film star who was divorcing her husband but preferred to do without that sort of publicity. Her married name meant nothing to the public, and when she went into court dressed as a dowdy little woman and speaking with a common intonation not a soul in the Press-box spotted her. Unlike most film stars she must have been an actress. Incidentally I hear that far and away the top-scoring witness at the Kravchenko case in Paris has been the Dean of Canterbury. The frock coat, the gaiters, the jewelled cross, the venerable domed head fringed with long white hair, the upraised hand, the Cathedral tones—there was nothing left to desire. These and the world-wide prestige of Canterbury—Manchester has a dean but would hardly have had the same glamour—entranced everyone in court. Half the French Press called him the Archbishop of Canterbury and the other half the Dean of Canterbury University.

RICHARD ROE

NOTES OF CASES

HOUSE OF LORDS

RACECOURSE: BOOKMAKER'S CLAIM

Cutler *v.* Wandsworth Stadium, Ltd.

Lord Simonds, Lord du Parcq, Lord Normand, Lord Morton of Henryton and Lord Reid. 28th February, 1949

Appeal from the Court of Appeal (92 SOL. J. 40; 64 T.L.R. 41)

The plaintiff, a bookmaker, brought an action against the defendant company, the owners of a dog racecourse, for damages and other relief in respect of their alleged breach of statutory obligations under s. 11 (2) of the Betting and Lotteries Act, 1934. Oliver, J., held, on a preliminary point, that an action would lie at the suit of an individual bookmaker for breach of those obligations, found that there had been a breach, and gave judgment for the plaintiff. Section 11 (2) imposes on the occupiers of a dog racecourse, so long as a totalisator is being lawfully operated there, the obligations (*a*) not to exclude anyone from the track merely because he is a bookmaker, and (*b*) to secure that there is available for bookmakers space at the track where they can conveniently carry on bookmaking. On the company's appeal the Court of Appeal held that the action would not lie. The plaintiff now appealed. The House took time for consideration.

LORD SIMONDS said that in *Doe d. Rochester* v. *Bridges* (1831), 1 B. & Ad. 847, Lord Tenterden stated the general rule that "Where an Act creates an obligation and enforces the performance in a specified manner . . . that performance cannot be enforced in any other manner." That general rule was subject to exceptions; but beyond the single fact that the performance by the company of their statutory duty would redound to the advantage of certain bookmakers, of whom the plaintiff might be one, he (his lordship), saw neither in the Act of 1934 nor in its attendant circumstances any element which took the present case out of the general rule in *Doe d. Rochester* v. *Bridges, supra*. It was urged that the rule had no application where the statutory remedy was by way of criminal proceedings for a penalty; but he saw no ground for that distinction: the implication was, if anything, in the opposite direction; for the sanction of criminal proceedings emphasised that that statutory obligation was imposed for the public benefit and that the breach of it was a public not a private wrong. He agreed with Somervell, L.J., that, where an Act regulated the way in which a place of amusement was to be managed, the interests of the public who resorted to it might be expected to be the primary consideration of the Legislature. If from the fact of regulation any class of persons derived an advantage, that did not spring from the primary purpose and intention of the Act. The appeal should be dismissed.

The other noble and learned lords agreed.

LORD DU PARCQ observed that Parliament had not yet made it a rule to state explicitly what its intention was in a matter which was often of no little importance, instead of leaving it to the courts to discover, by a careful examination and analysis of what it expressly said, what that intention might be supposed probably to be. There were no doubt reasons which inhibited the Legislature from revealing its intention in plain words, but he hoped that those responsible for framing legislation might consider whether the traditional practice which obscured Parliament's intention might not safely be abandoned.

LORD MORTON agreed with that suggestion.

APPEARANCES: *Pritt*, K.C., *Platts Mills* and *P. J. O'Connor* (*Seifert, Sedley & Co.*); *Sir Valentine Holmes*, K.C., *Paget*, K.C., and *Peter Bristow* (*Wilkinson, Howlett & Co.*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

COURT OF APPEAL

BOOKMAKER: CLAIM ON ACCOUNT STATED

Day *v.* William Hill (Park Lane), Ltd.

Bucknill and Singleton, L.JJ. 21st December, 1948

Appeal from Pritchard, J., in chambers.

The plaintiff claimed from the defendants, a company of bookmakers, £695 15s. alleged to be due under an agreement between the parties contained in two documents. The first was a letter from the bookmakers to the plaintiff acknowledging receipt of a deposit of £25 and stating that the plaintiff was on the defendants' register for a deposit account and might "invest" up to that amount or any amount standing to his credit at the time of his placing his commission. The effect of the letter was to accept the plaintiff as a client who might lay bets up to the agreed amount. The second document, made some two months later, stated in its first column "Stake 50s. win doubles 50s. win treble." In the second column were the names of horses or dogs selected, and in the third the place of the meeting. Lower in the second column were the words "Win £718 8s. 9d. . . ." At the foot of the sheet it was stated "Total amount invested £10, February 10, 1948. Date of race, February 9, 1948." The plaintiff also claimed £49 5s. 3d. from the defendants as on an account stated. In that claim reliance was placed on a document headed with the name of the plaintiff and stated to be an "account of" the defendants. There followed the words "for the week ending February 7, 1948," and a large number of entries in respect of bets on dogs or horses, the document concluding "c/f [carried forward] £49 5s. 3d." Pritchard, J., affirming the master, ordered the action to be struck out. The plaintiff appealed.

SINGLETON, J., asked to give judgment first, said that the two documents on which the first claim was founded, consisting as they did in the one case of an arrangement to accept bets or commissions and in the other of a document showing the result of certain bets made on one day, did not constitute an enforceable agreement by the bookmakers to pay the sum claimed. The account on which the second claim was based showed a sum to be carried forward but did not state to what account or for what purpose it was carried forward. In any event, it made no reference to the plaintiff's £25 deposit. Such a document did not constitute such an admission or absolute acknowledgment by the bookmakers of a sum due to the plaintiff as to be an account stated on which an action would lie. Both claims being unenforceable, the action was accordingly properly struck out.

BUCKNILL, L.J., agreed. Appeal dismissed.

APPEARANCES: *Caplan* (*William Foux & Co.*); *Barry*, K.C., and *Wingate-Saul* (*Hardcastle Sanders & Co.*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

RECOVERY OF SMALL TENEMENT

Lewis *v.* Gunter-Jones

Bucknill and Denning, L.JJ., and Jenkins, J. 22nd February, 1949

Appeal from Ledbury County Court.

The tenant of a house within the Rent Restriction Acts was called up for military service and left the house with his furniture in it, whereupon the plaintiff, a relative of his, occupied it. There was no evidence about payment of rent. The landlord, the defendant, gave the tenant notice to quit and the latter thereupon withdrew his furniture. The occupier, however, refused to quit, whereupon the landlord instituted proceedings under the Small Tenements Recovery Act, 1838, giving notice of the proceedings to the tenant but not to the occupier in the form which the Act required, though the landlord's solicitor wrote informing the occupier of the date of the hearing before the justices. The justices refused to hear the occupier because he was not a party to the proceedings, and issued a warrant for possession. The occupier did not apply to have the warrant quashed by certiorari, nor did he wait until the police officer should come to execute it and then tell him of his claim to be a sub-tenant, but at once brought an action against the landlord for trespass under s.3 of the Act of 1838. The landlord having proved the tenancy and its due determination, and the occupier having called no evidence, the county court judge made an order for possession. The occupier appealed.

DENNING, L.J.—BUCKNILL, L.J., and JENKINS, J., agreeing—said that the landlord's failure to give the occupier notice of the proceedings under the Act of 1838 was not a mere irregularity or informality, but a defect of substance fatal to the proceedings under the Act and rendering the warrant invalid. The defect infringed the principle, not confined to the Act of 1838, that no occupier of premises was to be affected by an order for possession unless he had notice of it and an opportunity of being heard. Defects in procedure did not, however, vitiate proceedings by an occupier under s. 3, and the occupier's action under the section was not invalidated because he had not first challenged the warrant or waited until the police officer came to execute it. The occupier, after setting up his possession of the house, was entitled to call on the landlord to prove his own right to possession. On the evidence given, however, the occupier was shown to be merely a licensee whose licence was determined and the action was properly dismissed. It would be lawful for the landlord in such a case as the present to re-enter the premises peacefully, for the principle whereby he had no lawful right to possession until he proved to the court his title against the person in occupation was not applicable in the case of a trespasser not entitled to the protection of the Rent Restriction Acts, or where the premises were not themselves within those Acts. Appeal dismissed.

APPEARANCES: *L. A. Blundell* (*W. F. Gillham*, for *Leslie J. Slade*, Newent); *Conway Clifford* (*Williamson, Hill & Co.*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

CHANCERY DIVISION

WILL: CHARITABLE GIFT: "FOR THE WELFARE OF CATS AND KITTENS NEEDING CARE AND ATTENTION"

***In re* Moss, deceased; Hobrough *v.* Harvey**

Romer, J. 11th February, 1949

Adjourned summons.

By her will made on 27th April, 1947, the testatrix directed her trustees to sell her leasehold house and to give one half of the net proceeds of the sale to her friend Miss X "for her to use at her discretion for her work for the welfare of cats and kittens needing care and attention." The testatrix further directed that the other half of the net proceeds of the sale should be divided amongst certain ladies "including my friend Miss X." Then the testatrix directed that her residuary estate should be given to her friend Miss X "for her to use at her discretion for her work for the welfare of cats and kittens needing care and attention." The court was asked to determine whether the dispositions to Miss X for the welfare of cats and kittens were valid gifts.

ROMER, J., said that the validity of a gift in favour of animals depended on the test whether the gift produced some benefit to mankind. In the present case, the gift passed the test with honour. The care of, and consideration for, animals which through old age or sickness or otherwise were unable to care for themselves, were manifestations of the finer side of human nature, and gifts in furtherance of these objects were calculated also to develop that side and were, therefore, calculated to benefit mankind. That was more especially so perhaps where the animals were domestic animals, and the object of the gift was to alleviate distress among cats and kittens.

In re Grove-Grady [1929] 1 Ch. 557 followed.

Declaration that the moneys are the subject of a valid and enforceable charitable trust.

APPEARANCES: *W. J. C. Tonge* (*Taylor, Jelf & Co.*, agents for *Wilson & Sons*, Salisbury); *G. D. Johnston* (*Batchelor, Fry & Co.*, for *Gisby & Son*, Ware, Herts.); *F. B. Marsh* (*Markby, Stewart & Wadesons*); *Danckwerts* (*Treasury Solicitor*).

[Reported by CLIVE M. SCHMITTHOFF, Esq., Barrister-at-Law.]

WILL: CONSTRUCTION: "BUSINESS DEBTS AND LIABILITIES"

***In re* Betts, deceased; Burrell *v.* Betts**

Roxburgh, J. 11th February, 1949

Adjourned summons.

By his will dated 17th November, 1944, S.B. bequeathed to his wife and his brother "in equal shares and free from all death duties the goodwill of my business of yeast merchants and baker's sundriesman together with the stock utensils in trade vehicles and plant connected therewith the debts due to me in respect of the said business . . . upon condition *viz.* that my said wife and brother discharge all the liabilities outstanding in respect of the said business as at the date of my death." The testator had two accounts, one entitled "S.B." which he used for business purposes, and the other entitled "S.B. Private Account" which he used for his private and domestic purposes. At the date of his death an amount of £1,286 11s. 9d. was standing to his credit of his business account, and he owed his brother, who was employed in his business, the sum of £2,128 7s. 10d., which sum represented the accumulated bonus to which the brother was entitled under the terms of his contract of employment and which, by arrangement with the testator, he had left standing on loan account in the testator's business. The court was asked to determine whether the two sums were debts due, or respectively, liabilities outstanding, in respect of the business.

ROXBURGH, J., said that as regards the two sums the same principle of construction had to be applied. It was not possible to say that the £1,286 11s. 9d. on the business account was "a debt due . . . in respect of the said business." That reference was intended to be primarily to trade debtors.

Similarly, the sum of £2,128 7s. 10d. was not a liability "outstanding in respect of the said business . . ." That phrase had also to be interpreted narrowly and referred primarily to trade creditors.

APPEARANCES: *A. A. Baden Fuller, R. L. Stone, L. R. Norris* (*Candler, Sykes & Dore*, for *Leonard Gray & Co.*, Chelmsford); *H. Hillaby* (*Kennedy, Ponsonby & Prideaux*, for *W. Hilliard and Ward*, Chelmsford).

[Reported by CLIVE M. SCHMITTHOFF, Esq., Barrister-at-Law.]

KING'S BENCH DIVISION

INCOME TAX: OXFORD GROUP'S CLAIM TO EXEMPTION

Oxford Group *v.* Inland Revenue Commissioners

Croom-Johnson, J. 13th January, 1949

Case Stated by the Income Tax Special Commissioners.

The appellants, the Oxford Group, claimed exemption from income tax for the years 1939-40 to 1944-45 in respect of rents, interest and annual payments received, and property owned and occupied, by it, on the ground that it was a body of persons established for charitable purposes only. The group was incorporated in August, 1939, as a company limited by guarantee. Its objects were set out in its memorandum of association and included, under a para. A, the advancement of the Christian religion, in particular by the means and in accordance with the principles of the Oxford Group Movement, founded in 1921 by one Buchman; the maintenance, support, development and assistance of the Oxford Group Movement in every way; and the exercise of powers, *inter alia* (in para. C) (3), to print and publish newspapers and books; (9) to establish and support any charitable or benevolent associations or institutions, and to subscribe or guarantee money for charitable or benevolent purposes in any way connected with the purposes of the Oxford Group; and (10) to do all such other things as were incidental, or the Oxford Group might think conducive, to the attainment of its objects. The Special Commissioners held that they were bound by *In re Thackrah* (1939), 83 SOL. J. 216, to negative exemption. The Group appealed.

CROOM-JOHNSON, J., said that the Crown had admitted that had para. A stood alone, there would have been a religious trust and a good charitable object. The court had, therefore, only to decide whether, as a matter of construction, the trust objects included anything which was not charitable so that it was impossible to say that the objects of the group were charitable only. While the objects in sub-paras. (1) to (8) of para. C were incidental or subsidiary to those in para. A, the words "or benevolent" in sub-para. (9) left the door wide open for anything which the Group might seek to do in connection with its activities. Sub-paragraph (10) also allowed it to do things which were not charitable in a legal sense. In fact the Group had, under that provision, obtained theatre tickets for people visiting this country and who were studying its ideals. There was no language in the memorandum of association to indicate that the objects in those sub-paragraphs were subsidiary only. The memorandum of association had been deliberately drawn in a wide form so that people could be caught in the wide net cast by the Group with the object of making them religious-minded. It was impossible to say that the Group had established that it was a body which had only charitable objects. Appeal dismissed.

APPEARANCES: *King*, K.C., and *Norman Armitage* (*Bircham and Co.*) for the group; *Pennycuick*, K.C., *J. H. Stamp* and *Hills* (*Solicitor of Inland Revenue*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

"SALE" OF FARM: JOINT TENANCY

Edwards *v.* Hall

Lord Goddard, C.J. 14th January, 1949

Action.

Before 1926 a farm passed by devise to the plaintiff and three others as tenants in common. Before 1939 she acquired the equitable interests of the other tenants in common, and in 1943 she purchased the interests of two of them in the notional proceeds of sale and in the rents and profits until sale. In December, 1946, the plaintiff let the farm to the defendant for one year from 29th September, 1946, and then from year to year. On 25th September, 1947, the plaintiff served notice to quit on the defendant purporting to determine the tenancy on 29th September, 1948. The defendant refused to quit and in the plaintiff's action for possession contended that he had bought part of the farm in 1943 and that the notice to quit was invalid for lack of the consent of the Minister of Agriculture and Fisheries under reg. 62, para. 4A, of the Defence (General) Regulations, 1939, whereby: "Where the whole or any part of an agricultural holding . . . since 3rd September, 1939 . . . has been sold in pursuance of a contract of sale . . . any notice to quit that holding or any part thereof given to the tenant so as to expire at any time after the end of the year 1941 shall be null and void" unless "the Minister . . . consents . . ."

LORD GODDARD, C.J., said that reg. 62 could never have been intended to apply to such a case as the present. The plaintiff becoming the sole freeholder of the farm by purchasing

the equitable interests of two other tenants in common in 1943 was not a sale of the land, or of part of it. By virtue of Sched. I, Pt. IV, para. 1 (2), and s. 35 of the Law of Property Act, 1925, the entirety of the land had become vested in the tenants in common as joint tenants on statutory trusts for sale. The transaction of 1943 was a sale of an undivided share in personalty (*Re Price* [1928] Ch. 579). The Minister's consent was not required, and the notice was valid. Judgment for the plaintiff.

APPEARANCES: *H. E. Francis* (*T. D. Jones & Co.*, for *Hugh Williams & Presdee Jones*, Llandilo); *Graham Dow* (*Kinch and Richardson*, for *W. Herbert Lewis & Co.*, Aberayron).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

LICENSING: ALLEGED SURRENDER OF LICENCE

Carter *v.* Pickering

Lord Goddard, C.J., and Humphreys, J. 14th January, 1949

Case Stated by Sussex Justices.

The respondent, the licensee of a public house, applied to Haywards Heath licensing justices at their annual licensing meeting for a new licence in place of his existing licence, which new licence was to be free of certain restrictions attaching to the existing licence. Immediately before the licensing meeting the licensee's solicitor handed to the justices' clerk the existing licence with the intimation that that document would be required in the course of the application for the new licence. The application for the new licence was refused on its merits, whereupon the existing licence was handed back to the licensee's solicitor, no decision having been given or necessary of the question whether the handing in of the existing licence constituted a surrender of it. The licensee continued to trade under the existing licence, but was prosecuted for selling alcoholic liquor without a licence. The prosecutor contended that the licensee had, in fact and in law, surrendered his licence at the licensing meeting. The justices dismissed the information, and the prosecutor appealed.

HUMPHREYS, J.—LORD GODDARD, C.J., concurring—said that the effect of handing in the existing licence to the justices' clerk was merely to assure the justices that the document would be in their hands should they be minded to issue a new licence free from the restrictions. There was no justification in any licensing Act for the assumption that a licensee could put an end to the validity of his licence merely by handing it in to the licensing justices as being no longer required. A licensee who wished to obtain for licensed premises a new licence in different form must satisfy the licensing justices that he did not propose to carry on the premises under both licences, for there could not be two different licences in respect of the same premises. Therefore the handing in of the existing licence for return if the application should be refused was a proper proceeding. Appeal dismissed.

APPEARANCES: *Sidney Lamb* (*Jennings, Son & Ash*, for *Gates and Co.*, Brighton); *Percy Lamb* (*Laurence Legg*, Brighton).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

DIVISIONAL COURT

"DRUNK IN CHARGE": ALCOHOL'S DELAYED ACTION

Duck *v.* Peacock

Lord Goddard, C.J., and Humphreys, J. 14th January, 1949

Case Stated by a metropolitan magistrate sitting at Marlborough Street Magistrate's Court.

The defendant, having imbibed alcohol, drove away in his car. Ten minutes later he felt dizzy, stopped the car 10 feet from the near-side kerb in a London square, and fell asleep at the wheel. He was found in that position, with the engine of the car running, more than an hour later. The magistrate convicted him of being in charge of the car while under the influence of drink, contrary to s. 15 (1) of the Road Traffic Act, 1930, but did not order him under s. 15 (2) to be disqualified from holding a driving licence, because he held that the defendant had been fit to drive when he entered the car and that that fact with the fact that he stopped the car when he realised that he was no longer fit to drive constituted a "special reason" for not disqualifying him under s. 15 (2). The prosecutor appealed.

LORD GODDARD, C.J.—HUMPHREYS, J., agreeing—said that the defendant must have been under the influence of drink when he began his journey, because nothing further had happened afterwards to bring about that state. It was immaterial when the unfitness to drive showed itself. The defendant was none the less under the influence of drink when he started his journey, because the influence only showed itself later. No special reason existed here for withholding disqualification, and the case must be remitted with that instruction. Appeal allowed.

APPEARANCES: *Gattie* (*The Solicitor*, Metropolitan Police); *T. Springer* (*Arthur Robson*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

LANDLORD: INJURY TO TENANT'S WIFE

Anderson *v.* Guinness Trust

Hilbery, J. 9th February, 1949

Action.

The plaintiff lived with her husband, the tenant, in a two-roomed flat in a block, or series of blocks, of flats owned by the defendants. On 26th June, 1947, she was carrying a milk bottle containing milk back to her flat from the flat of her sister, which was in a different block of the series, when she tripped on an irregularity in the surface of one of the courtyards which she had to cross, fell forward with the bottle in her hand, and suffered permanent injury to her hand through cuts. The plaintiff was aware of the condition of the surface of the courtyard, which was the result of the removal by the local authority of air-raid shelters which had been erected there by them. She claimed damages from the landlords for breach of their duty to her as an invitee.

HILBERY, J., said that there was clearly no contractual link between the plaintiff and the landlords. As for her claim to be an invitee, she was a part of the family of the tenant and, it would seem, in exactly the position described by Lord Atkinson in *Fairman* v. *Perpetual Investment Building Society* [1923] A.C. 74, at pp. 85, 86, where he said that the plaintiff there, being a licensee of the defendants, was bound to take the staircase in question as she found it. The plaintiff was undoubtedly in the courtyard with the permission of the landlords, but she could claim no rights against them higher than those of a licensee. It was argued that she was the housekeeper of her husband, the tenant, and that the housekeeper of a person whom the landlords had as their tenant was on the premises on a matter of business interest which she had in common with the landlords, since she was the housekeeper facilitating the life of the tenant in the premises and so rendering him better able to pay the rent. To that subtlety he (his lordship) was not prepared to accede. To do so would be to stretch the expression "common business interest" unreasonably. The plaintiff was a licensee to whom the landlords owed the same duty as to any other person permitted to cross the courtyard. That duty was not to expose her to a concealed danger. The irregularity in the surface which tripped her was open and apparent, and she had been aware of the condition of the courtyard ever since the local authority had removed the shelters. Judgment for the defendants.

APPEARANCES: *Pain* (*L. O. Glenister & Sons*); *Humfrey Edmunds* (*Berrymans*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

PROBATE, DIVORCE AND ADMIRALTY

DIVORCE: DECLARATION THAT PARENT "UNFIT"

S. *v.* S.

Hodson, J. 8th December, 1948

Application by a wife for a declaration under s. 7 of the Guardianship of Infants Act, 1886.

A wife was granted a decree *nisi* on the ground of cruelty consisting of sexual practices of the husband against the wife's will causing injury to her health. Section 7 of the Act of 1886 provides for the making of a declaration that a guilty parent is unfit to have the custody of the children; and a parent so declared is not, on the death of the other parent, entitled as of right to the custody or guardianship of the children. Section 4 (1) and (2) provides for guardianship of children by the other parent when the one with whom they are dies.

HODSON, J., said that it was argued for the husband, in opposition to the wife's application, that s. 7 of the Act of 1886 was obsolete. Lord Morton in *Cliff* v. *Cliff* [1948] W.N. 380, at p. 381, had said that the latter part of s. 7 no longer had any application because a parent was no longer entitled to the custody of children as of right on the death of the other parent. Lord Morton was not really considering this point; moreover, he had not considered s. 4 of the Act of 1925 which regulated the position arising on the death of a parent of an infant. It was argued that even if s. 7 was not obsolete the making of a declaration of this kind was valueless. He (his lordship) thought it desirable in a case of this kind for a court to record its view that a particular parent was unfit. Declaration accordingly.

APPEARANCES: *Beyfus*, K.C., and *P. Hollins* (*Evelyn Jones and Co.*, for *Jackson & Sons*, Ringwood); *Stevenson*, K.C., and *Victor Russell* (*Vertue, Son & Churcher*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

CORRESPONDENCE

[The views expressed by our correspondents are not necessarily those of THE SOLICITORS' JOURNAL*]*

" The Cuckoo in the Nest "

Sir,—To my mind, the above article [93 SOL. J. 126] represents an unrealistic approach to a problem of common occurrence and is to that extent misleading.

Under the law as it now is the landlord's obvious course of action is not to concern himself with the former tenant directly (he has obligingly departed), but to endeavour to show that the so-called sub-letting was not a sub-letting in law and that the so-called sub-tenant has never been a sub-tenant but merely a sharer of the house or a lodger.

In the case of small properties which have been inhabited by two or more families, it is not usually difficult to show that the *Neale* v. *Del Soto* [1945] K.B. 144 principle must be deemed to have been applicable, and if there is room for any doubt the landlord can usually call evidence as to the so-called letting having been a sharing ; this evidence is sometimes available from the former tenant, but might be available from other persons and even the so-called sub-tenants may be prone to make damaging admissions inadvertently. The failure of the tenant to give notice to the landlord in accordance with s. 5 (4) of the 1933 Act is some slight evidence. *Brown* v. *Draper* [1944] K.B. 309 is the real and obvious obstacle—an obstacle which can, however, be surmounted by joining the tenant as co-defendant alleging against him the grounds specified in either para. (*a*) or (*d*) of Sched. I in the 1933 Act or both of these grounds.

I do not agree that the common form rent book prohibits sub-letting or assignment. It usually merely recapitulates the provisions of the Rent Acts as to overcharging and giving notice to the landlord.

When the present Rent Control Bill becomes law our friend *Neale* v. *Del Soto* will leave us and it will be necessary to direct one's attention to the former tenant in order to see what can be got from him by way of redress.

T. RIGBY.

Preston.

[Our contributor writes :—

If the landlord can show that there was *no* sub-letting obviously he is in a good position, but the article pre-supposes the existence of a sub-letting and what I wrote would be beating the air if there is not in fact a sub-letting. If the occupier has legal advice he will obviously allege an assignment or sub-letting, and it is with that situation that I have dealt. Our correspondent urges the landlord " not to concern himself with the tenant," and then goes on to admit that even if there is no assignment or sub-letting the tenant would have to be joined as co-defendant as a result of *Brown* v. *Draper*. Some rent books merely set out portions of the Rent Acts, others, and they are as numerous, contain conditions for the tenancy.]

BOOKS RECEIVED

Mandates, Dependencies and Trusteeship. By H. DUNCAN HALL. 1948. pp. xvi and (with Index) 429. London : Stevens & Sons, Ltd. 25s. net.

The Conveyancer's Desk Book. Being the Twentieth Edition of " The Practical Man," by the late ROLLA ROUSE. Pt. I, Revised by D. MACINTYRE, M.A., of Gray's Inn, Barrister-at-Law. Pt. II, Annuity Tables by H. W. MCLELLAN, F.I.A. 1948. pp. viii and (with Index) 447. London : Sweet & Maxwell, Ltd. 30s. net.

The Conveyancer and Property Lawyer. Vol. 13, No. 2. December, 1948. Editors : DONALD C. L. CREE, M.A., of Lincoln's Inn, Barrister-at-Law, and HAROLD POTTER, LL.D., of Gray's Inn, Barrister-at-Law. London : Sweet & Maxwell, Ltd.

Building Societies. Their Aims and Practice. With a Foreword by the EARL OF HALIFAX. 1949. pp. iv and 22. London : The Building Societies Association. 6d. net.

Clarke Hall and Morrison's Law relating to Children and Young Persons including the Law of Adoption. First Supplement to Third Edition. By A. C. L. MORRISON, C.B.E., formerly Senior Chief Clerk to the Metropolitan Magistrates' Courts, and L. G. BANWELL, Chief Clerk of the Metropolitan Juvenile Courts. 1949. pp. x and 70. London : Butterworth & Co. (Publishers), Ltd. 7s. 6d. net.

Central Land Board Practice Notes. First Series. Being Notes on Development Charges under the Town and Country Planning Act, 1947. 1949. pp. iv and (with Index) 46. London : H.M. Stationery Office. 1s. net.

Rayden's Practice and Law in the Divorce Division of the High Court of Justice and on Appeal therefrom. Fifth Edition. Edited by F. C. OTTWAY, of the Probate and Divorce Registry, and J. E. S. SIMON, of the Middle Temple, Barrister-at-Law. Consulting Editor : C. T. A. WILKINSON, Registrar of the Probate and Divorce Division. 1949. pp. cxxxviii, 890 and (Index) 113. London : Butterworth & Co. (Publishers), Ltd. 75s. net.

Taylor's Principles and Practice of Medical Jurisprudence. Vol. II. Tenth Edition. Edited by SYDNEY SMITH, C.B.E., M.D. (Edin.), F.R.C.P. (Edin.), D.P.H., Regius Professor of Forensic Medicine, University of Edinburgh. Revised by W. G. H. COOK, LL.D., M.Sc. (Econ.) (Lond.), of the Middle Temple and Western Circuit, Barrister-at-Law, and C. P. STEWART, Ph.D., M.Sc. 1948. pp. vii and (with Index) 841. London : J. & A. Churchill, Ltd. 50s. net.

Oyez Practice Notes, No. 14 : The Solicitor's Guide to Development and Planning. By R. N. D. HAMILTON, Solicitor of the Supreme Court. 1949. pp. 131. London : The Solicitors' Law Stationery Society, Ltd. 7s. 6d. net.

A Liberal Attorney-General. Being the life of Lord Robson of Jesmond (1852–1918) with an account of the office of Attorney-General. By GEORGE W. KEETON, M.A., LL.D., of Gray's Inn, Barrister-at-Law. 1949. pp. vii and (with Index) 241. London : James Nisbet & Co., Ltd. 15s. net.

SURVEY OF THE WEEK

HOUSE OF LORDS

A. PROGRESS OF BILLS

Read First Time :—

Public Works (Festival of Britain) Bill [H.C.] [1st March.

Social Services (Northern Ireland Agreement) Bill [H.C.] [1st March.

Read Second Time :—

Water (Scotland) Bill [H.C.] [1st March.

Read Third Time :—

American Aid and European Payments (Financial Provisions) Bill [H.C.] [3rd March.

Clydebank Burgh Order Confirmation Bill [H.C.] [2nd March.

Education (Scotland) Bill [H.C.] [3rd March.

Export Guarantees Bill [H.C.] [3rd March.

Minister of Food (Financial Powers) Bill [H.C.] [3rd March.

National Theatre Bill [H.C.] [3rd March.

In Committee :—

Special Roads Bill [H.C.] [3rd March.

Wireless Telegraphy Bill [H.C.] [1st March.

HOUSE OF COMMONS

A. PROGRESS OF BILLS

Read First Time :—

Housing Bill [H.C.] [28th February.

To amend the Housing Act, 1936 ; to promote the improvement of housing accommodation by authorising the making of contributions out of the Exchequer and of grants by local authorities ; to amend the Housing (Financial and Miscellaneous Provisions) Act, 1946, with respect to the amounts of contribution payable thereunder out of the Exchequer, and certain other enactments relating to the making of contributions out of the Exchequer in respect of the provision of hostels and of grants in respect of building experiments ; to extend and amend certain provisions of the Small Dwellings Acquisition Act, 1899, the Water Act, 1945, and the Building Materials and Housing Act, 1945 ; and for purposes connected with the matters aforesaid.

Read Second Time :—

Analgesia in Childbirth Bill [H.L.] [4th March.

Baiting of Animals Bill [H.C.] [4th March.

Bradford Corporation Bill [H.C.]	[28th February.
British North America Bill [H.C.]	[2nd March.
Docking and Nicking of Horses Bill [H.C.]	[4th March.
Lands Tribunal Bill [H.C.]	[28th February.
West Bromwich Corporation Bill [H.C.]	[28th February.

Read Third Time :—

Colonial Naval Defence Bill [H.L.]	[28th February.

B. DEBATES

In introducing the Lands Tribunal Bill on its second reading, the ATTORNEY-GENERAL said that its aim was to strengthen and codify the statutory arrangements for settling disputes as to the valuation of land, to provide a single and consistent jurisdiction combining legal and technical experience, and to provide for an appeal up to the House of Lords on matters of legal importance. He wanted to make it clear that the Bill in no way affected the code or codes of compensation or valuation which might have to be followed ; it was concerned not with the *principles* on which valuation should be made, but with the *persons* who made it. Most of these questions at present were referred to official arbitrators appointed under the Acquisition of Land (Assessment of Compensation) Act, 1919. The main defect in the present system was that the arbitrators had no means of providing themselves with legal advice on points of law. The Town and Country Planning Act, 1947, had substantially altered and complicated the law, and it was felt that tribunals were now required which could deal with points of law and build up a consistent body of case-law. The Tribunal would deal with claims from the £300 million for loss of development value.

Mr. OSBERT PEAKE suggested that the Bill ought also to enable the Tribunal to deal with the assessment of development charges, and he thought that a Tribunal with legal qualifications was needed for the administration of the Landlord and Tenant (Rent Control) Bill. Mr. WALKER-SMITH said that the new Tribunal possessed two qualities which the Rent Tribunals ought also to possess—it had power to award costs, and its decisions were subject to appeal. Mr. BALDWIN thought that members of the Auctioneers' Institute should be eligible to appointment to the Tribunal (the Bill provides for the appointment of surveyors from the Royal Institution of Chartered Surveyors). Mr. MITCHISON thought that some such tribunal might be asked to deal with the question of tied cottages. He thought the only justification for such cottages was necessity and a tribunal might deal with the question whether any particular cottage needed to be tied. In reply to the debate, Sir HARTLEY SHAWCROSS said that the assessment of development charge was one for decision by the Central Land Board alone, it was not a contested matter and not one which could be made the subject of an appeal. He did not agree that it was a proper matter for the Lands Tribunal. Nor did he think that the work of the Furnished Houses Rent Tribunals should be transferred to the Tribunal. Rent Tribunal cases rarely involved questions of law. [28th February.

The Select Committee whose function it is to examine statutory instruments, having reported to the House that the Local Authorities (Charges for Dustbins) Order, 1949, " appeared to make an unusual and unexpected use of the powers conferred by the Statutes " under which it was made, Sir JOHN MELLOR moved that an humble Address be presented to His Majesty to annul the Order. The Order enables local authorities, where they provide a dustbin, to charge the landlord 5s. annually instead of 2s. 6d. as formerly, for its maintenance. The Order, Sir John Mellor pointed out, purports to be made under reg. 56 of the Defence (General) Regulations, 1939. That regulation enables the competent authority to authorise undertakers to make charges in excess of, or in addition to, those which the undertakers would otherwise be authorised to make. This can only be done " for the purposes specified in subs. (1) of s. 1 of the Supplies and Services (Transitional Powers) Act, 1945." One of these purposes is that of " maintaining, controlling and regulating " services essential to the well-being of the community so as " to secure . . . their availability at fair prices." The Ministry of Health submitted a Memorandum relying upon that purpose as justifying the Order. Sir John Mellor contended that the Order did nothing to secure the availability of dustbins ; it merely preserved local authorities from loss. He pointed out that landlords of rent-controlled premises could not charge an increased rent to cover the increased cost of maintaining dustbins which they had provided, and the Minister, if he wanted to increase the charge, should amend the Public Health Act, 1936, and the Rent Acts at the same time. Captain CROWDER thought the Order aimed at enabling local authorities to charge for removal of refuse as well as for dustbins. In reply Mr. BLENKINSOP said that the Order was quite clearly covered by the words in the 1945 Act because local authorities took the view that the provision of dustbins was essential to the welfare of their communities. [28th February.

C. QUESTIONS

The ATTORNEY-GENERAL stated that the Leasehold Committee was considering the position of tenants of shops and of office accommodation and would deal with these matters in its interim report on business premises which was expected shortly. The question of legislation on the matter would be considered in the light of the report. [28th February.

Mr. SILKIN said that the allocation of shops or shopping sites in new towns to intending retailers was essentially a matter for the corporations which he had established under the Act of 1946 for the development of the new towns. [1st March.

Mr. BEVAN stated that the question as to what authority should have the right to allocate private building licences on the basis of one to every four houses built in a new town was at present under consideration. [3rd March.

In reply to a question by Wing-Commander HULBERT as to the cause of delay in payment of claims for war damage to traders' stocks, Mr. J. EDWARDS stated that stocks were insurable against war damage under Part II of the War Risks Insurance Act, 1939, and that all claims in this class, aggregating £117 million, had been paid. [1st March.

Mr. BEVAN stated that he hoped very shortly to be in a position to fix the appointed day of Pt. III of the Local Government Act, 1948, in accordance with s. 72 thereof. [3rd March.

Mr. CHUTER EDE, in giving figures of the indictable offences among young persons for 1947 and 1948, stated that the percentage increase in 1948 was 26 per cent. among boys and 23 per cent. among girls. [1st March.

STATUTORY INSTRUMENTS

Registration of Naturalised Persons (Consular Officers) Regulations, 1949 (S.I. 1949 No. 278).

These regulations prescribe the procedure whereby a naturalised person resident abroad may register annually at a British consulate and thereby preserve his British nationality, which might otherwise be taken from him by the Secretary of State under s. 20 (4) of the British Nationality Act, 1948.

Parish Council Election Rules, 1949 (S.I. 1949 No. 284).

Rural District Council Election Rules, 1949 (S.I. 1949 No. 285).

National Insurance (Mariners) Amendment Regulations, 1949 (S.I. 1949 No. 301).

These regulations bring shore fishermen not employed under a contract of service within the scope of the National Insurance (Mariners) Regulations, 1948.

Control of Paper (Revocation) Order, 1949 (S.I. 1949 No. 305).

Coal Mines (Lighting and Contraband) Draft Regulations, 1949.

Solicitors Act, 1932 (University of Nottingham) Order, 1949 (S.I. 1949 No. 297).

This Order adds the recently established University of Nottingham to the universities whose degrees entitle an intending solicitor to exemption from the Preliminary Examination and to a reduction of the period of articled service from five to three years.

Import Duties (Drawback) (No. 1) Order, 1949 (S.I. 1949 No. 298).

Safeguarding of Industries (Exemption) (No. 1) Order, 1949 (S.I. 1949 No. 265).

PARLIAMENTARY PUBLICATIONS

War Damage (Amendment) Bill (House of Commons Bills, Session 1948–49, No. 59).

This private members' Bill would transfer from the War Damage Commission to the Treasury the discretion which the Commission possesses under the proviso to subs. (2) of s. 31 of the War Damage Act, 1943, to extend in particular cases the time limit for the submission of claims. The Treasury would first consult either the Commission or the local authority in whose area the property in question was situated. It would appear that the main purpose of the Bill is to enable the exercise of the discretion to be the subject of question in the House of Commons. The War Damage Commission being an independent statutory body is not responsible to the House.

SOCIETIES

The annual general meeting of the CHESTER AND NORTH WALES INCORPORATED LAW SOCIETY was held at the Town Hall, Chester, on 28th February, 1949, Mr. Alfred W. Chambers, of Northwich and Tarporley, presiding. The retiring officers were re-elected for one year. Subjects of discussion included the Rushcliffe Scheme and a possible minimum scale of costs. The annual dinner was held the same evening in Chester, and was attended by His Honour Judge Sir Edwin C. Burgis, the Right Rev. Bishop Norman Tubbs, D.D., Dean of Chester, and Dr. W. H. Grace, M.D., representing the Chester and North Wales Medical Society.

Some sixty members and friends attended the quarterly meeting of the LAWYERS' PRAYER UNION, held at The Law Society's Hall on Thursday, 17th February, 1949. Mr. C. W. Robbins, of Messrs. Robbins, Olivey & Lake, was in the chair, and the speaker was Mr. Karel Kulik, a Czechoslovakian pastor, who gave a striking testimony of his spiritual experiences in Austria before the war, and as a prisoner in Dachau Concentration Camp. There has recently been a noticeable revival of interest in the Lawyers' Prayer Union, and membership has considerably increased during the past few years. Lawyers and law students interested in the Union are invited to write to Mr. F. C. Coningsby, Barrister-at-Law, 3 Dr. Johnson's Buildings, E.C.4, or to the Hon. Assistant Secretary, Mr. A. O. Lewis, of 153A Upper Richmond Road, Putney, S.W.15.

Replying to the toast of "The Bench and the Bar" at the annual dinner of the NOTTINGHAM LAW STUDENTS' SOCIETY, held at the Black Boy Hotel, Nottingham, on 1st March, Mr. Justice Cassels gave a series of "definitions." He was accompanied at the dinner by Mr. Justice Lynskey, the two learned judges being in Nottingham for the City and County Assizes.

Mr. Justice Cassels referred to—

The Bench: A praiseworthy assembly of Englishmen with a few Lancastrians and Yorkshiremen thrown in, rendering their services to the country according to their lights and intelligence and deserving well of the citizens. They are independent—I don't mean financially; they too, know something of costs, but it refers to living—and they sit as representing what is sometimes described as a bulwark of the Constitution, whatever that may mean, and nobody can dictate to them—unless they sit in appellate jurisdiction.

The House of Lords: There you will find the most learned and the most experienced judges sitting in pre-war suits and delivering judgments which are absolutely final.

The Court of Appeal: Sits in four Divisions. That shows how inefficient other judges are.

Chancery Division: Where the judges tell limited companies how they should deal with shareholders' money so that it won't be noticed, and alter completely the testamentary dispositions of deceased persons—and don't care two straws about it.

Probate, Divorce and Admiralty Division: Where the judges are perfectly at home whether they are dealing with collisions at sea or collusions on land, and provide every facility, so long as the estate is large enough, for relatives to display their extreme affection for each other when quarrelling over what has been left.

King's Bench Division: The most distinguished and learned Division of whom my brother and myself are the most illustrious examples. Every form of human frailty comes up for our consideration—and gets it. Judges of the King's Bench Division are incorruptible. The judges' lodgings are in the park; anything you address there will be duly delivered!

County Court Judges: A fine body of men who can find what nobody else can find—alternative accommodation. That is the reason the Lord Chancellor has said in his wisdom they should deal with divorce.

It was announced at the seventh ordinary meeting of PRESTON LAW DEBATING SOCIETY for 1948–9, on 2nd March, that the Society had won another first prize on the result of one of its debates. This makes the total for this session two firsts and one second prize out of five debates. An interesting lecture was given by Mr. E. W. Wells, chartered accountant, on "The recent changes in company law." Mr. E. C. Dickson presided. The next, and last, meeting for this session will be the annual dinner to be held at Rainford's Cafe, on 25th March.

The SOLICITORS' MANAGING CLERKS' ASSOCIATION announces that Mr. William Stabb, of the Inner Temple, will deliver a lecture on "Gaming and Wagering," on Friday, 11th March, 1949, in the Old Hall, Lincoln's Inn. The chair will be taken by the Hon. Mr. Justice Morris, at 6.15 p.m. Tickets are available at the offices of the Association, Maltravers House, Arundel Street, Strand, W.C.2.

The UNION SOCIETY OF LONDON will meet on Wednesday, 16th March, in the Barristers' Refreshment Room, Lincoln's Inn, at 7.45 p.m., to debate the subject "That this House deplores the splitting of the anti-Socialist vote by the Liberal Party."

NOTES AND NEWS

Honours and Appointments

The King has approved the appointment of Mr. WILLIAM ARTHIAN DAVIES, K.C., as Recorder of Chester.

The King has approved the appointment of Mr. ARCHIE PELLOW MARSHALL, K.C., as Recorder of Warwick in succession to Mr. CHARLES LAMOND HENDERSON, K.C., who has been appointed Recorder of Bedford.

The Lord Chancellor has appointed Mr. G. H. S. BUTCHER, Registrar of Barnstaple, Bideford, Holsworthy, South Molton and Torrington County Courts, and District Registrar in the Barnstaple registry of the High Court.

Mr. DOUGLAS MALCOLM KERMODE, second assistant solicitor to the County Borough of St. Helens, has been appointed Assistant Solicitor to Bath Corporation. He was admitted in 1947.

Mr. M. A. P. SMITH, assistant solicitor to Huddersfield Corporation, who was admitted in 1938, and Mr. G. E. DAVIES, who is at present with Glamorgan County Council and was admitted in 1947, have been appointed Assistant Solicitors to Cheshire County Council.

Mr. ERIC D. WATTERSON, solicitor, of the firm of Watterson, Moore & Co., of Cheltenham, has been appointed clerk to the Cheltenham Magistrates as from 1st April. He was admitted in 1930.

Mr. GEORGE YATES has been appointed Assistant Solicitor in the Town Clerk's department at Blackburn. He was admitted in 1937.

Mr. J. K. N. STANSBURY, of North Harrow, has been appointed Assistant Solicitor to the Isle of Ely County Council. He was admitted in 1947.

Mr. NOEL FRANK DAVIES, Deputy Town Clerk of Leamington Spa, has been appointed Town Clerk of Evesham in succession to the late Mr. Oliver Hunt. Mr. Davies was admitted in 1947.

Personal Notes

Alderman D. J. Cartwright, partner in the firm of Cartwright and Fieldhouse, solicitors, of Huddersfield, is to be the next Mayor of Huddersfield. The duties of Mayoress will be undertaken by Mr. Cartwright's 19-year-old daughter, Miss Shirley Cartwright, owing to the ill-health of Mrs. Cartwright.

Mr. Samuel Widdicombe, who has just retired from the position of Town Clerk of Newbury, has presented his wig and gown to the town for the use of future town clerks.

Wills and Bequests

Mr. Francis John Fallowfield Curtis, solicitor, of Leeds, left £162,106, net personalty £149,807. In addition to a number of direct bequests to employees of the firm of Simpson, Curtis & Co., Leeds, of which he was senior partner, Mr. Curtis left £250 to the partners to distribute as they thought fit between employees.

Mr. Ernest Speakman, retired solicitor, of Birkdale, Lancs., left £108,856.

"THE SOLICITORS' JOURNAL"

Editorial, Publishing and Advertisement Offices: 88–90, Chancery Lane, London, W.C.2. Telephone: Holborn 1403.

Annual Subscription: £3 inclusive (payable yearly, half-yearly or quarterly in advance).

Advertisements must be received first post Tuesday.

Contributions are cordially invited and should be accompanied by the name and address of the author (not necessarily for publication).